SUPREME COURT OF THE UNITED STATES.

No. 53.

JOHN TOMPKINS, SURVIVING PARTNER OF JOHN TOMPKINS & ADAM MURRAY, LATE PARTNERS, TRADING UNDER THE FIRM OF TOMPKINS & MURRAY, COMPLAINANTS AND APPELLANTS,

vs.

LEONARD WHEELER ET AL., DEFTS. IN CHANCERY.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE KENTUCKY DISTRICT.

INDEX.

	Original.	Print.
Bill in chancery	1	1
Subpœna	9	6
Return	10	6
Amended bill	10	7
Answer of Norman Porter	11	7
Answer of Stephen Swift	16	10
Answer of Leonard Wheeler	21	13
No. 1, exhibit, referred to in said answer	40	19
Nos. 2—3—24, exhibits, referred to in said answer	41	23
Answer of Abel Wheeler	42	25
Exhibits referred to in said answer	44	26
Answer of James Devers and others	57	34
Answer of Joseph Putnam	58	35
Amended bill	63	37
Complainants' exceptions to answers of Wheeler and Swift	65	39
Bill of revivor against Walter Carr's executors, and amended bill against other defendants	67	40
Answer of Thos. H. Pindell	69	41
Answer of Walter Carr's executors	70	42
Alias subpœna	71	42
Answer of Leonard Wheeler	72	43
Answer of Joseph Putnam	76	46
Answer of F. L. Turner	77	46
Answer of Norman Porter	78	47
Agreement of parties	81	48
Answer of L. Wheeler	81	49
Exhibits referred to in said answer	83	50
Argument of case, and cause continued	86	52
Writ of ne exeat against Joseph Putnam refused	86	52
Final decree	88	53
Exhibits referred to in original bill	88	54
Citation and service	135	84,85

S. D. Langtree, Print.

Pleas before the Honorable John Catron and Thomas B. Monroe, Judges of the 8th Circuit Court, United States, Kentucky District, holden at the Capitol in the town of Frankfort at the May term of said Court in the year 1840.

Be it remembered that heretofore to wit on the 19th day of February in the year 1838 came John Tompkins, surviving partner of John Tompkins and Adam Murray, by his attorney into the clerks office of the court aforesaid, and filed the following bill in chancery, to wit:

To the Honorable the Judges of the Circuit Court of the United States, Eighth Circuit and Kentucky District. In chancery sitting:

Respectfully complaining sheweth unto your honors; Your orator John Tompkins, surviving partner of the said John Tompkins and Adam Murray, merchants &c., trading under the firm of Tompkins and Murray, a citizen and resident of the State of Virginia, that at the last term of your honorable circuit court, on the common law side thereof your orator recovered two judgments against a certain Leonard Wheeler, a citizen of the State of Kentucky, surviving partner of a firm lately, trading and doing business under the style and name of Leonard Wheeler and Co.—one for the sum of $4,000 with interest from the 21st day of February 1814 and costs and other charges. And the other for the sum of $891 53 with interest from the 21st day of February 1814 and costs and other charges. Copies of which judgments are herewith exhibited and filed and made part of this bill marked A and B, and on which, executions were not to issue until the 1st of February instant, as by the terms of said judgments, reference being and to them will be shewn, and your orator states that the time having elapsed when he could lawfully take out executions on said judgments on the day of and on the day of 1838, there issued from the office of the clerk of your honorable court two executions, one on each of said judgments which were duly placed in the hands of the marshal of the district of Kentucky to execute and return, on which execution the said marshal has returned and endorsed in substance, that there was no property found, of which to make the money on said executions, copies of which executions marked C and D, and the endorsements and returns thereof by the said marshal are herewith filed and exhibited and prayed to be read and considered as a part of this bill. Your orator would further represent that on the 27th day of January 1838 the said

Leonard Wheeler by deed of trust or assignment made a conveyance to certain of his preferred and specified creditors, named in said deed of whom your orator was not one of certain property in said deed specified and mentioned to satisfy and pay certain debts and liabilities and securityships therein also specified and mentioned a copy of which said deed of trust or assignment is also herewith filed and exhibited and your orator prays that it may—taken read and considered as a part of this bill, marked E, which said deed of trust or assignment was taken by the said Wheeler before the clerk of the county court of Fayette county, Kentucky and acknowledged to be his act and deed, and as your orator is advised, at the instance and request of said Wheeler was recorded in the office of said clerk.

Your orator alleges and charges that said deed of trust as to the creditors of said Wheeler of whom your orator is one, is fraudulent and void. He charges that it was made by the said Wheeler without the knowledge privity or assent of the creditors of said Wheeler named therein who are the parties of the second part thereto, that the said deed was never delivered to nor accepted by said creditors and parties, that it was made with intent to deceive and defraud his just creditors, who were not included within its provisions, that the possession of the property conveyed by said deed, was retained by the said Wheeler, and was never delivered to the said parties of the second part or to any one for them, and that the said deed was made and lodged in the clerks office of the said Fayette county court for record after the rendition of your orators judgment and but a short time before the period arrived when according to said judgment your orators execution could issue. Your orator further states that he has reasons satisfactory to his own mind, to believe and therefore charges, that the said Wheeler has been interested and concerned with divers persons in the prosecution of business, requiring the employment of considerable pecuniary capitol and among others he alleges that a certain Joseph Putnam, a citizen of the State of Kentucky, one of the parties of the second part to said deed has had the use and employment of money belonging to said Wheeler, and that the same has been used and employed for the benefit and profit of the said Wheeler, and he moreover alleges, that the sale of the goods mentioned in said deed by the said Wheeler to said Putnam was made fraudulently, and with intent to deceive and defraud the creditors of said Wheeler and without any valuable consideration in law, and the business was intended to be and is conducted in the name of said Putnam for Wheelers benefit in whole or in part.

He moreover alleges, that Norman Porter a citizen of the State of Kentucky another of the specified and preferred creditors mentioned in said deed and one of the parties of the second part thereto may have had money of the said Wheelers in his said Porters hands to be used in whole or in part for said Wheelers benefit, and that the note mentioned in said deed of $3,170 was purchased

by said Porter for Wheelers benefit and with Wheelers money, according to some understanding or arrangement between, to that effect.

He moreover states, that he has reasons to believe and therefore charges, that a certain Stephen Swift, who is a citizen of the State of Kentucky, and has been carrying on the business of a grocer in the city of Lexington for several years, and he refers particularly to the years 1829, 1830 and from the year 1833 to 1836 employed a portion of the said Wheelers capitol in the prosecution and carrying on of said grocery business, and that the said Wheeler was interested as a partner or otherwise in said Swift's grocery business, and that the said Swift has now in his possession goods or money and other property belonging to said Wheeler or is indebted to him for the same.

To the end therefore, that full and ample disclosures may be made by the said Putnam, Porter and Swift, he prays that they be made defendants to this bill, and he makes all the parties of the second part to said deed, the creditors of said Wheeler defendants also, and the said Wheeler himself is also made a defendants, and he prays, that each and all of them may answer fully and particularly the allegations herein contained.

He prays that said Putnam may be compelled to answer, and say specifically, what were the terms and conditions of the sale of the goods from the said Wheeler, to the said Putnam? Whether he is not prosecuting the business of said store for the use and benefit of the said Wheeler, either in whole or in part? That he answer what he gave for said goods, when he was to pay for them, and how? That he answer whether he paid any money for said goods? If so, how much? That he answer whether before the purchase of said goods, Wheeler had or had not an interest to some extent, in said store or goods? If so, to what extent? That he answer whether the said Wheeler, did not furnish the whole, or a portion of the money, or capital to prosecute the business at some time? And if so, when and how much, and what became of it? And that he answer whether he has or has not, now some money or property or choses in action, belonging to said Wheeler, in his possession or under his control? That he answer how the said Wheeler became indebted to him in the sum of $1,201 97, and what was the consideration thereof? and whether or not there are, or have been any other transactions between said Wheeler, and said Putnam, to what extent, of what kind, and whether there are or are not, any unsettled accounts between them except those growing out of the sale of the goods? And that he make a full disclosure of all the various dealings and transactions between the said Wheeler and himself?

That the said Porter may answer specifically, and particularly what he gave for the debt mentioned in said deed of trust, which the said Wheeler owed, to F. and J. Sexton? That he answer when he purchased it, and whether he paid his own or Wheeler's money for it? And whether he does or does not hold the same for said Wheeler's benefit? Whether it was or was not bought at said

Wheeler's instance and request, and whether the same is not now considered satisfied and paid as between Porter and Wheeler, that he make full disclosure of all the pecuniary transactions between said Wheeler and himself, and whether directly or indirectly, he does or does not, hold any money, choses in action or other property, real or personal for Wheeler's benefit or use, or subject to his future or present control or management?

That the said Swift, answer and state specifically and particularly, whether there have been any and if any, what dealings or transactions of a pecuniary character or otherwise, between said Wheeler and himself? That he answer and say, whether the said Wheeler had any, and if any, what interest in the said Swift's grocery store in Lexington? and what has become of it? Whether he has any subsisting interest or concern in said grocery? Whether said Wheeler ever furnished him any money or property to carry on and prosecute said business? And if so, what amount and when? And whether the money has ever been returned and repaid, and if so, when and how? That he answer whether or not, he has any money or property of said Wheeler in his hands or possession or under his, said Swift's management or control? If so, how much? And that he state what dealings or transactions there have been between said Wheeler and himself?

Your orator further prays, that Abel Wheeler, another of the specified and preferred creditors in said deed, and one of the parties of the second part thereto, may also answer and state specifically and particularly whether he has ever at any time lent and advanced to Leonard Wheeler, moneys or other property, and if so, how much and when, and on what consideration? And when it was to repaid? And that he specify the pecuniary transactions between the said Leonard and himself? Whether he holds any note or memorandum, or other evidence of the debt or debts? And when and how executed?

That the said Leonard Wheler himself, answer specifically and particularly the several interrogatories herein before put to the said Putnam, Porter, Swift, and Abel Wheeler, in reference to transactions between them severally and respectively?

That he disclose to this court all his dealings and transactions with the said Putnam, Porter, Swift, and Abel Wheeler, fully and explicitly, that he answer whether he has any money or property besides what is contained and specified in said deed of trust or assignment, and if so, of what kind, and where it is?

That he answer whether either the said Putnam, Porter, and Swift, directly or indirectly, holds any money or other property, real, personal, or mixed, for his use and benefit, or subject to his control or order? If not, does any one else, and who? That he state whether he consulted the said preferred creditors mentioned in the said deed of the first or second class, about the execution of said deed, whether they have ever accepted the same, and if so, when and how?

That he state how, and to whom he delivered said deed, and that further answer all the matters in this bill contained as fully as if he was further interrogated thereto?

That the defendants, the creditors of said Wheeler, the parties of the second part to said deed, all answer and state whether they were consulted, or knew any thing of the execution of said deed, until after it was made and recorded or lodged for record; whether the said Wheeler, without their knowledge, did not transact the whole business in relation thereto? Whether the said deed was ever delivered to and accepted by them? If so, when delivered and when accepted? And how, and in what manner done? Whether any trustee has ever been appointed aecording to the provisions of said deed, and when? And who that trustee is? And whether any money has come to his hands, and how much and to whom paid?

And for greater certainty your orator here specifies the names of those, who besides the said Putnam, Swift, and Porter, and Abel, and Leonard Wheeler, he makes defendants hereto; that is to say, Walter Carr, Samuel Pilkingtons, executrixs, John Kellar, citizens of the State of Kentucky; R. and H. Haight, a citizen of New York; Marsailles and Martin, a citizen of Philadelphia, in Pennsylvania; Porter and Butler, Martha Carr, Higgins, Cockran & Co., Ned Williams, citizens of Kentucky; William A. White, of New York; James Devers, Bromey and Ewing, citizens of Kentucky; George M. Chambers, a citizen of Illinois; E. W. Craig, a citizen of Kentucky; Alexander M. White, a citizen of New York; Joel Wallingsford, a citizen of New Hampshire; E. and S. Steadman, citizens of Kentucky; Ben. Slater & Co., a citizen of Pennsylvania.

And your orator prays that process may issue against the said defendants, and all the other defendants, to this bill, that is to say, Fielding L. Turner, Henry Madison, and Philip Breckenridge, who are citizens of Kentucky; Michael Crone or Croin, a citizen of Kentucky; James West, a citizen of Kentucky.

The trustees of the Kentucky Association for the improvement of stocks, which said Kentucky Association is a body corporate, incorporated, the General Assembly of Kentucky, of which Thomas H.Pindell is president, who is a citizen of Kentucky, as are also the said trustees, and Mrs. E. Brooks, a citizen of Kentucky.

Your orator further says, that said Putnam, Porter, Swift, Abel Wheeler, and all or any other of said defendants, may be restrained and enjoined from paying over to the said Leonard Wheeler, or any one for him, any money or property, and that the same may be kept subject to the future and further order of your honorable court.

And your orator also prays that said deed of trust or assignment, may, on a final hearing, be set aside and annulled, and held for naught; that your orator may be decreed to have the benefit of his judgments out of said property so conveyed, that your honors would

decree to your orator the payment of all monies or choses in action, in the hands of any said defendants belonging to said Wheeler, and grant to your orator the United States writ of subpœna directed, &c., commanding, &., and all such other and further as the circumstances and nature of the case hereinbefore set forth will require, and he will ever pray, &c.

J. T. MOREHEAD,
For Complainant.

Subpœna.

The United States of America to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon Joseph Putnam, Norman Porter, Stephen Swift, Abel Wheeler, Leonard Wheeler, Walter Carr, Samuel Pilkingtons, executrix, John Kellar, R. and H. Haight, of New York, Marsailles and Martin, of Philadelphia, Porter and Butler, Martha Carr, Higgins, Cockran & Co., Ned Williams, William A. White, of New York, James Devers, Cromey and Ewing, George M. Chambers, of Illinois, E. W. Craig, Alexander M. White, of New York, Joel Wallingford, of New Hampshire, E. and S. Steadman, Ben. Slater & Co., of Philadelphia, to appear before the judges of our 8th circuit court of the United States of America in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery, exhibited against them in our said court, by John Tompkins, surviving partner of John Tomkins and Adam Murray, citizens of the State of Virginia, and this they shall in nowise omit, under the penalty of four hundred dollars each, and have then there this writ.

[L. S.] In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 19th day of February, A. D. 1838, and in the 62d year of our Independence.

Attest: JNO. H. HANNA, *Clerk, K. D.*

Marshal's Return.

Executed on 20th February, 1838, on N. Porter, Leonard Wheeler, Porter and Butler, W. K. Higgins, Ned Williams, E. W. Craig—on 23d February, on S. Swift, James Devers, E. Studman, S. Studman—on 24th February, on Mrs. Huggins, executrixs of Samuel Pilkington—on 5th March, on James Cromey, of Louisville—on 12th March, on Walter Carr and Martha Carr, and on M. Cockran and Wm. L. Thompson, partners of Higgins, 23d March—on Kellar, March 30, Samuel Ewing, 3 April, Abel Wheeler, R. and H. Haight, Marsailles and Martin, Will A. White, G. M. Chambers, Alex. M. White, J. Wallingsford and B. Slater & Co., are no inhabitants of this district, Joseph Putnam not found.

JNO. M. McCALLA, *M. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of April, in the year 1838, (until which time this cause was continued on the rules) came the complainant, by his counsel, and filed the following amended bill, to wit:

To the Honorable the Judges of the Circuit Court of the United States, for the 8th Circuit and Kentucky District:

Your orator, John Tompkins, would respectfully file this as an amendment to his original bill, and he prays that the said Wheeler and Putnam may answer the following interrogatories respectfully, that is to say, that the said Wheeler may answer and say, whether the debt due from Putnam to him for his stock of goods is a part of the aggregate given in the assignment of the debts on the books of said Wheeler, or is not that debt an additional amount? Has there or has there not been a schedule of the debt assigned for the benefit of preferred creditors, made out—if there has, at what time, and with whom is it lodged? Have you not transacted business in the name of Abel Wheeler since the rendition of the judgment against you in favor of the complainant to avoid those of other claims? And what were those transactions? Have you at no time, since the rendition of the judgments, obtained against you in Virginia, of which the complainants is one, assigned property, of which you were the rightful owner, to avoid those judgments, and if so, when and to whom, and at what time? That the said Putnam may answer and say, had you any knowledge of the purchase of Wheeler's goods before you knew of the rendition of your orators judgment against Wheeler in this court, and did he not, at the time he proposed the sale to you, state the object? If so, relate it, and what Wheeler stated on that subject.

And your orator prays as in his original bill.

JAMES T. MOREHEAD,
For Plaintiff.

And afterwards, to wit, at rules held as aforesaid, in the month of May, and year aforesaid, (1838) came Porter and Swift, and filed their answers herein, viz., the anwer of Norman Porter to a bill in chancery, exhibited against him and others, in the 8th circuit court of the United States for the Kentucky district, by John Tompkins.

This respondent excepting to the misrepsentations in said bill contained for answer thereto, saith: That he never had any money or property of Leonard Wheeler in his hands or under his control, to be used either in part or in whole for said Wheeler's benefit, except it be in a loan made by Wheeler to respondent, for which respondent paid him interest. This loan was made in the fall of 1836, of the money of George M. Chambers, as respondent understood, and was made to the firm of Porter & Butler, and the only use or benefit said Wheeler received, or was to receive, was the interest on said money.

Respondent would further answer, that he gave the sum of $307 50, Kentucky currency, for the debt of F. and J. Sexton; that he purchased it in the month of January, 1838, but commenced negotiations for its purchase in December, 1837, that he paid his own money for it and not the money of Leonard Wheeler; that it was not purchased or bought at said Wheeler's instance or request, nor was there any understanding or arrangement between himself and said Wheeler concerning it. Your respondent would further state, that in the fall of 1837, he understood that an old debt, due by said Wheeler to the present complainant for several thousand dollars, had been purchased by one Elisha J. Winter, for the sum of $1,000, and that said Winter was pressing said debt, in the name of the present complainant, to judgment against said Wheeler, and that he intended to coerce the same or part thereof out of him; he understood that this purchase was made by said Winter after he had been informed by Wheeler of its existence, and his friendly co-operation requested and promised in its arrangement and compromise. He also understood that there were several other debts due by said Wheeler to a considerable amount, equally just with that of present complainant, and standing on much higher moral grounds, when the character of the purchase by Winter was considered. He then determined, with his own money, to make a purchase of one of these debts, believing that a preference would be given to it over the debt purchased by said Winter. He would state there was no arrangement of any kind between said Wheeler and himself, as to what was to be done with this debt, he considers himself the fair, legal holder by assignment for a valuable consideration *bona fide* paid, of said Sexton debt. The said, is wholly unsatisfied and unpaid, so far as he is informed or believes, and he considers it wholly at his own discretion and pleasure either to coerce the whole of said debt or any part of it, and what he will do with it he reserves for his future decision, to be governed by circumstances. But he would state that he has as good and legal a right to purchase debts against said Wheeler as said Winter, to purchase them at a discount if he can, and collect every part of it if he chooses. He would however state that his claim shall never stand in the way of a fair and equitable adjustment of all or any of said Wheeler's old debts; and he now proposes to complainants that they shall each receive from Wheeler the amounts they have respectively sold and purchased their claims, or if that is declined, respondent prays that his legal rights be fully enforced, and the money paid him to—used as any other of his own property and done with as he shall choose.

Respondent would further state, that he saw the deed of mortgage executed by L. Wheeler to his creditors, before it was executed, and approved and accepted of its provisions for the benefit of himself individually, and of the firm of Porter & Butler. He would also state, that it is difficult for him to set out particularly, and specially all his dealings and transactions with Leonard Wheeler,

he would however state, most unequivocally, that there are none of the character intimated in said bill, soon after he came to Kentucky, he became intimate and friendly with Leonard Wheeler, at that time Wheeler was the manager of said Winters business, the conductor of said Winters store, and seemingly at least in the entire confidence and friendship of said Winter; and as far as respondent ever knew was devoted to his interest so far as it came under his control. Soon after respondents arrival and settlement in Lexington, said Winter profered to respondent, the use of his money and credit, acting upon this generous offer, and the intimacy with said Wheeler, respondent was in the habit of borrowing from the store of said Winter, sums of money as needed by himself, to be repaid in a few days. These transactions were made with said Wheeler, and this respondent most solemnly avers, that so far as he can remember, every dollar of said loans were returned in some very short time after they were respectively made. This kind of transaction has continued since Wheeler has commenced business for himself, and these species of loans, and the loan made at interest as aforesaid, are the only cases in which money has ever been placed in his hands by said Wheeler, and he declares that they have been in no way beneficial to said Wheeler, except as entitling him to similar acts of friendship. These loans were sometimes evidenced by entries upon the books, and sometimes by the checks on bank, of respondent or by some memorandum, but no regular and exact account of them being kept, it is utterly impossible for him to set them out individually, and give dates and amounts. He supposes that such is not the object of the interrogatories contained in said bill, and presumes that it is sufficient to state that such loans were small in amount and soon repaid, and so far as he can now recal to his memory, never in one instance retained beyond thirty days, except in the loan at interest before mentioned.

Another transaction between respondent and Leonard Wheeler, is a joint purchase of wool made in the year 1836. It was believed by said Wheeler that something could be made by a speculation in that article; and respondent was willing to join him in it; in the first instance, the funds of respondent alone were used in the purchase, and all the wool was bought with his money, afterwards they obtained a loan from bank, and his money returned to him, and said loan from bank diminished from payments arising from the proceeds of the sale of the article. Wheeler has had the sole management of said wool business, and the same has never been in his possession, no funds of said Wheeler were used in the transaction, and the advance was made by your respondent, the matter is yet unclosed, and it forms an item in the mortgage of Wheeler above referred to. The debt there due your respondent is to be paid from the collections, from the purchases of said wool, and will be closed by said collections.

There is also a transaction of Porter & Butler with Wheeler mentioned and provided for in said mortgage. The debt due them by

Wheeler is the amount of a sale of some hackles made by said Wheeler for them, which is not yet collected. In addition to these transactions, there has been a barter account between the store of respondent and the store of said Winter, and of said Wheeler after he commenced business; these accounts have been closed and settled from time to time, and the books of said Winter will exhibit it, he presumes as long as it continued. These are all the transactions he can now recal to his memory, if there were others, they were similar in their nature with those set forth, and none in any shape or manner, involving a deposit of money or property in this respondents hands, or control to be held for the use or benefit of Wheeler, and none involving the least shadow of unfairness, and none that required concealment from any one or especially from complainant or his assignee Mr. Winter, respondent having fully answered all that he is advised to be material for him to answer, prays to be hence dismissed with his costs.

NORMAN PORTER.

COMMONWEALTH OF KENTUCKY, *Fayette County, sct.*

This day Norman Porter made oath before me a justice of the peace, in and for the county and Commonwealth aforesaid, that the statement of the foregoing answer so far as stated, as of his own knowledge are true, and so far as stated from the information of others he believes to be true.

[L. S.] Given under my hand and seal, this 13th day of March, 1838.

The separate answer of Stephen Swift, to a bill in chancery exhibited against himself and others, in the 8th circuit court of the United States by John Tompkins.

This respondent excepting to the misrepresentations and untruths in said bill, contained for answer thereto, says, that true it is in the year 1830, and from that time up to the present moment, he has been carrying on a grocery store, sometimes by himself, and sometimes in connexion with others. In the year 1829, he also retailed some groceries in connection with his paint store and candle business, but he states most unequivocally, that neither in said grocery business nor in any other business which he ever carried on in Lexington or elsewhere, did he ever employ any portion of Leonard Wheeler's capital, money or property of any kind or description, and he utterly denies that said Leonard Wheeler was ever interested in said grocery business or store, as partner or in any other manner whatever, or that he ever had any connexion in business of any kind with said Wheeler, and he utterly denies that, now has or ever had in his possession any goods, money or property, of any kind belonging to said Wheeler, or that he is indebted or ever was indebted for the same. And to the special interrogatories of com-

plainant in said bill, he answers, that he has never to the best of his remembrance and belief, ever had any dealings or transactions of a pecuniary character or otherwise with said Wheeler, exceeding at any time the sum of $50; and those transactions and dealings were merely purchases made by said Wheeler of small amounts of groceries, and a small barter account since said Wheeler commenced business, not exceeding in the whole $50.

He further answers that Wheeler never had any interest in his grocery store in Lexington, or in any other business he ever carried on; and therefore nothing has become of it. He further answers that said Wheeler has no subsisting interest in said grocery store, or any other store of respondent. He further answers that Wheeler never furnished him any money or property to carry on said grocery business or any other business, to any amount whatever. He further answers that he has no money or property of said Wheeler in his hands or possession, or under his management or control, and that he never had.

Respondent cannot refrain from expressing his surprise at the character of the allegations of said bill, and of the interrogatories therein contained, and he avers that the charges therein contained are but a tissue of untruth. This respondent would state that for many years said Leonard Wheeler was the manager of a store belonging to one Elisha Winter, and as he understood, his general agent in the transaction of his business, and in that character there were some few isolated transactions which respondent will detail as near as his memory and the lapse of time will permit. Some years since, he thinks in the year 1834, he purchased negro man named James, and wishing to pay the whole amount of the price, and bank not being then open, he got Mr. Wheeler to cash his check for a portion of the money, he thinks about $150. The money was in bank to meet the check, and he presumes it was paid back the same day; the transaction was in said Winters' store.

In the year 1835, as he thinks, respondent understood from Leonard Wheeler that said Elisha Winter wished to pay off a debt due by him to the executors of A. S. Barton, deceased, for $1000, but that said executors were unwilling to receive it, your respondent wishing the accommodation, applied to said executors to take up said Winters' note, by giving his own with security, which was agreed to by said executors, and the arrangement accordingly made, and Mr. Winters' note taken up, and his own given in its place; said Wheeler gave respondent two drafts, one on Natchez and the other on Dr. Brashear, for the amount of the note so taken up; said two drafts were duly paid, and he presumes the transaction was well known to said Winter, as respondent was introduced to said Brashear by said Winter in New Orleans, with a view of presenting said draft. These are the only transactions of respondent with Wheeler, in his character of agent of said Winter, which he can now recal, except his dealings in said store as an ordinary customer, and having a small barter account with said store, all of which the books of

said Winter will shew as he presumes and believes. And he avers that said dealings as a customer, and said barter account have been long since closed and fully paid, and if there were other transactions they were of a similar character and long since settled and closed, and therefore dwell not in his recollection; certain it is there were none of the character charged in said bill.

And he would further state that from a long and intimate knowledge of, and acquaintance with said Wheeler, he utterly disbelieves that he ever placed any money of his own or any other person in the hands of any of the defendants to said bill, or any one else, or that the least unfairness ever existed in his transactions either as agent of said Winter, or since he has commenced business on his own account. Your respondent would further state that his own books are open to the inspection of complainant or his counsel, and he would refer him to D. L. Vigus, who has kept said books most of the time, and to J. D. Swift, as the persons best acquainted with all his business transactions, and whose testimony is open to him; also to Charles A. Jourdon, who kept respondents books from 1833 to 1836. Having fully answered, he prays to be hence dismissed with his costs.

STEPHEN SWIFT.

FAYETTE COUNTY, *sct.*

Be it known that on the 14th day of March, 1838, before the subscriber, a justice of the peace in and for the county aforesaid, personally appeared Stephen Swift, and made oath that the facts stated in the foregoing answer are true so far as depends upon his own knowledge, and so far as depends upon information derived from others he believes to be true. Given under my hand the day and year last above mentioned.

JAMES L. HICKMAN.

And afterwards, to wit, at rules held as aforesaid in the month of July, and year last aforesaid (1838,) came the complainant and gave the defendants a rule for answer herein.

And afterwards, to wit, at rules held as aforesaid in the month of September, and year last aforesaid, came the complainant by his counsel, and gave all the defendants mentioned in this said bill a rule for hearing, except Porter and Swift, and says the statements in the answers of the said Porter and Swift, so far as they contradict the allegations of his bill are untrue, and that the allegations of his said bill, are true, and leave is given either party to take depositions.

And afterwards, to wit, at rules held as aforesaid, in the month of October, and year last aforesaid, came the complainant by his counsel, and on his motion it is ruled that the complainant's bill be taken for confessed against all the defendants except Porter and Swift, (they having answered,) and leave is given either party to take depositions.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, (1838,) came the parties aforesaid by their attorneys, and the defendants moved the court to file an amended answer, but the court not being sufficiently advised of and concerning the same, took time, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, came the complainants, by their counsel, and, on his motion, it is ordered and decreed that the complainants bill be dismissed as to the following persons, to wit: R. and H. Haight, citizens of New York; Marsailles and Martin, citizens of Pennsylvania; William A. White, a citizen of New York; George M. Chambers, a citizen of Illinois; Alexander M. White, a citizen of New York; Joel Wallingsford, a citizen of New Hampshire; Benjamin Slate and Co., citizens of Pennsylvania; and Mrs. E. Brooke, a citizen of Mississippi.

And on the following day of the term and year aforesaid, came the parties aforesaid, by their counsel, and the court being advised of and concerning the premises, the order taking the bill for confessed herein, is set aside, and leave is given the defendants, Leonard Wheeler, Abel Wheeler, Joseph Putnam, Catharine Huggins, executrix of Samuel Pilkington, decd., Higgins, Cockran and Co. Ewing and Croney, Porter and Butler, and E. and S. Steadman, to file their answers herein, which is done accordingly; and leave is also given the complainants to amend their bill herein, which was done accordingly. Which answers and amended bill are as follows, viz:

The answer of Leonard Wheeler to a Bill in Chancery filed against himself and others, in the Circuit Court of the United States for the District of Kentucky, by John Tompkins.

This defendant, reserving to himself the benefit of all exceptions to the jurisdiction of this honorable court, and to the misrepresentations, &c., &c., in said bill contained, for answer to so much of said bill as he is advised to be material for him to answer, says: That true it is the complainant did obtain such judgments in your honorable court, and took such proceedings thereon as are stated in his bill. To enable the court to understand his whole situation in regard to this debt, and his conduct in relation to the matters and things contained in said bill, it will be necessary to recur to the period of the origin of this debt. About the years from 1810 to 1814, this defendant and E. Burdett, under the style of Leonard Wheeler and Co., were transacting business, as merchants, in the city of Richmond, Virginia; this was during the late war with Great Brittain; and in one of the great fluctuations of prices, produced by a prospect of peace, from the mediation of Russia, this defendant and his partner found themselves unable to pay their debts, at the then depressed value of their goods. They made their situation known to their creditors, and assigned to them or to their use, their property; a sale of this property was made during the

depression, and the result was that this defendant was left in an almost hopeless bankruptcy, a large number of the debts being unsatisfied. Defendant being then young, he entertained hopes of being again able to commence business, and arrange, compromise, and adjust his debts. After some time he removed to the State of Kentucky, and with some small means that he had been enabled to make before he emigrated, and the profit of some business to which he attended in this State, he was enabled to collect together about $2,200, with which sum he formed a partnership or connection in business with one E. J. Winter, of Lexington. In time, however, this sum was expended in compromising and arranging these old debts, and when expended, the connection of your orator with said Winter, as a partner, ceased; but he continued with him as his chief clerk, and the manager of his business, but without any understanding as to the amount of compensation for his services. This continued from the year 1821 to the year 1832, and during that period he labored diligently and faithfully, attending as carefully to the interests of said Winter as he could have done to his own; and during all that time he continued to receive from Winter manifestations of unbounded confidence and entire satisfaction, which confidence and satisfaction he feels conscious that he deserves by the devotion to the interests of his principal, and faithfulness in the discharge of his duties. It is not willingly that defendant thus speaks of himself, but he feels it his duty to do so, from the real nature of the charges contained in said bill. As will be presently shewn, said E. J. Winter is the real, actual complainant in this suit; and, from remarks made out of doors, he cannot pretend an ignorance that he intends by said bill to charge defendant with having, during his connection with him in business, as partner or agent, abstracted some of said Winter's funds, and placed the same in the hands of friends. The calumnious charge he wishes to meet fully; and he denies that there is one word of truth in it, or one particle of foundation for it. His receipts are truly presented on the books of said Winter; and he never did, directly or indirectly, abstract funds from said Winter and place them in the hands of the persons he charges, or of any other persons, or keep them himself. The books of said Winter will shew, truly and justly, what he has received, and all he has received; and if there has been any omission whatever, it was purely unintentional, and is not remembered; nothing, certainly, of the character he seems to suppose, ever occurred. Defendant continued as the agent of said Winter until the year 1832, when he proposed to defendant to give up to him and his son, Charles Winter, the store, to be managed by them as partners, and conducted in his name, for their joint profit, they supporting the said Winter's family.

The proposition was made in the spirit of liberality by said Winter; and in that spirit received; and this defendant, to close his agency in the same liberal spirit, closed his account on said Winter's books by his services up to that date. Defendant avers that he does verily believe that his services, estimated at the

lowest standard, would have considerably exceeded the amount he had received, but he had hopes of profit from the arrangement proposed; it was liberal in said Winter, and he, the defendant, acted in that same spirit, when he was content that his services should be paid by what had already been received by him. The proposed partnership was formed, and continued until the fall of 1835, when said Winter, from several causes, not however relating to defendant, became dissatisfied with remaining in Lexington, required the store and its business to be wound up, and the goods sold at cost. This sudden breaking up was attended with such loss, that the profits which he had reasonably hoped, were sunk. Defendant came out of his various connections with said Winter, as partner, as agent, and again partner, of his son, without a dollar of profit beyond his economical support. At the time he became entirely disconnected with said Winter, he had nothing beyond the clothes he wore, and a small amount of furniture in his room, he had nothing in his own hands, or the hands of any friend. He then wished to commence business alone, and he believed from his experience in it that a small and safe business, requiring but little capital, could be transacted in furnishing hatters materials and shoemakers trimmings, &c., &c. He had found in that business *from* little loss from bad debts or remnants, good profits and but little competition, with a view of commencing such a business he purchased and charged himself with all the articles of that description in said store, amounting to about $2,000, hoping that on an equitable adjustment of his services with said Winter, he would be entitled to about that amount. Previous, however, to commencing business he visited Virginia, with a view of making some arrangement with his old creditors, but owing to the lapse of time, the vicissitudes of life, he could find none with whom he could make an arrangement, and he determined to commence business hoping to arrange with such as should come forward from time to time upon equitable terms; he did commence, and in his business was successful as he anticipated, but commencing wholly without capital he was compelled to borrow money and purchase on credit to a considerable extent, and by this means he became indebted to the persons and in the amounts specified in the deed of mortgage or assignment mentioned in complainants bill, he having paid said Winter the said $2,000 and settled with him in full, by which settlement he received nothing but as above stated. He was proceeding thus prosperously in his business, when about the spring 1837 the claims of complainant were sent out for adjustment to one Wm. Fellows of Louisville, this was one of his old debts, it was due, justly due, when it was presented to him for adjustment. He candidly and fairly explained he pecuniary condition to the agent and proposed to give him $1,000, and defendant referred said agent to E. J. Winter as the person best able to confirm his account of his situation, and the fairness and sufficiency of his offer; said Winter confirmed his representations, and assured said agent that this

defendant had offered fully as much as he should for this claim. The agent did not close with the offer, but assured defendant that no proceeding should be taken with the claim, and nothing done to his prejudice unless upon notice to him. After this time defendant conversed with said Winter several times about this debt, and treated said Winter as one on whose long friendship he could rely as a confidential adviser as to his duty and interest. He says that said Winter in this manner through his confidential friendship with defendant became acquainted with the existence of this debt, and favorable disposition of the holder to take a fair and reasonable amount in the way of compromise. Fellows was spoken to concerning it by two other of defendants friends, and this defendant was assured of the favorable disposition of the agent to receive the amount proposed by defendant, but that he considered it his duty to write and consult his principal concerning it, and that nothing prejudicial would be done without further notice to him. Soon after, the difficulties of the year 1837 came on, spreading commercial ruin in all directions, and this defendant heard nothing for a time concerning this debt. About the last of September or first of October, 1837, he was surprised by a suit being brought against him in your honorable court on this claim. He proceeded to Louisville, called upon Fellows, who was as much surprised as defendant at the bringing of the suit; but he seemed assured that the suit was not the result of cupidity, but of some motive which he would not then explain, and he further assured defendant that it could be arranged on the same terms by him proposed. He informed defendant that he had parted with the control of it, and that he was pledged to secrecy as to the name of the individual, but that he expected to be able to arrange it in the course of a short time. Being somewhat reassured this defendant returned, but soon after determined again to go to Louisville, and, if possible, ascertain the purchaser of this claim and the possibility of arranging it. Before going he again consulted with Winter as one of his oldest and firmest friends, and he saw nothing in his conduct other than friendly interest for his success, at this trip he discovered the purchaser of this claim, and to his inexpressible and unmingled astonishment found it was Elisha J. Winter. He was informed by Fellows that he believed from the friendly relations subsisting between Winter and defendant, that Winter had purchased for defendants benefit; that it was under that impression it was sold to him, and but for that impression it would not have been. That Winter informed him and assured that no improper use was to be made of it against defendant; that it had been sold to Winter for $1,000, payable in twelve months', being the same sum offered by defendant, and that sum was taken for it with a view to the benefit of defendant. Said E. J. Winter not regarding the manner of his obtaining this claim, his violation of the trust reposed in him as the confidential friend and adviser of defendant, utterly disregarding the long, devoted, and faithful services of defendant to his interest, without profit and

upon a bare support, persisting in pushing his claim to judgment broke up defendant in his business, blasted all his hopes of extricating himself from his old debts by his labor and industry, and now, in his bill, charges him with fraud in the concealment of his effects and swindling him of his property. Defendant has tried all reasonable means of adjusting this matter, but without success. He states that every imputation or charge against him of unfairness towards said Winter as unqualifiedly false. He is content with the most rigorous scrutiny into that portion of his life, but he puts it to the court whether said Winter coming in as a purchaser in the manner he did, lulling said Fellows into a belief of his friendship for defendant, and in the garb of a friend obtaining command over the claim, whether he is in equity entitled to hold his purchase, and whether he should not be viewed and treated as a trustee acting in bad faith, and compelled to surrender his claim to complainant. By these harsh and inequitable proceedings of said Winter, he was reduced to the necessity of closing his business, in order to protect the just claims of those who had aided him with money and credit in again starting in business. He considered the means in his hands as justly belonging to them to the extent of their claims, and he was informed by said Winter himself, that he would not interfere in any manner with his proceedings in their protections. His first step was to sell all his goods to Joseph Putnam, a man of considerable estate, at the price of $7,038 13, which was a fair price founded upon a full invoice of the goods. This price said Putnam undertook by his obligation to pay to certain of his creditors, as will more fully appear by his obligation to this defendant herewith filed as a part of this answer, marked No. 1. This defendant states that he at that date stood justly and truly indebted to the persons as named in said obligation, and in the amounts therein stated. Every debt therein named was as fair and true and founded upon valuable consideration. Upon the execution of said obligation by Putnam, he executed to Putnam a bill of sale of his goods and delivered them into his possession. Defendant utterly denies that the sale was made to hinder or delay or defraud his creditors, but for the purpose and object alone of securing his creditors in the payment of their just dues, and to secure those very creditors that Winter acknowledged should be first secured. Until that sale, Putnam had no interest in said store whatever. Since *since* the sale he has had the entire and sole interest in it. He has employed defendant as his clerk or agent to conduct his business without any agreement as to compensation, and upon the same terms as defendant continued with Winter as his agent. He has no interest in the goods or store whatever. This arrangement not embracing all his new debts, defendant by the deed of mortgage or assignment mentioned in complainant's bill assigned to the remaining new creditors all his debts and dues, and all his other property not sold to Putnam. These new creditors are

named and specified in said deed as the first class. He states that every debt therein named was just and correct, and either then due and payable, or shortly to become due and payable, and all fair and founded upon valuable consideration, and of the amounts specified in said deed. That each and all of them had been created since he had commenced business in Lexington, and defendant would here state that he received from E. J. Winter not only verbal but written assurances that he would never interfere with the just payment of these new creditors. Defendant herewith files a letter of said Winter to that effect, marked No. 2. The present proceeding to annul the arrangement made for their payment and his present efforts to deprive them of their only means of payment shows how he has fulfilled the voluntary pledge. After providing for the payment of all his new debts contracted during and in his late business, defendant hoped and believed there would be a surplus arising from the profits of his business. He fears this surplus will not be as large as he then anticipated, from several large debts having become doubtful since the time of making said deed. This surplus he felt should be paid upon his old debt. There were many of these debts remaining unpaid and unreleased; but besides the debt of complainant there was only one other, the debt due the Sextons of New York, to which a legal claimant could be found. Norman Porter had purchased that debt at near about the same rate as defendant understood that Winter had purchased complainant's debt. He was advised that the law gave him the right to prefer his creditors, and in the exercise of that legal right he made said Porter, assignee of the Sexton debt, the mortgagee of that surplus. The cause of that preference may readily be seen in the bad faith of the real holder of complainant's claim in its purchase, and the calumnious and false charges with which he was endeavoring to blacken his reputation and blast his prospects. The debt of the Sextons is really and *bona fide* due and unpaid, and held in estimation as legal and valid obligation on him as any debt he owed to those old creditors. It was not purchased with defendant's money, or money that he had given or furnished for that purpose, nor was it purchased under any arrangement or understanding with him, nor is there now or has there ever been any arrangement or understanding between Porter and defendant as to how it shall be held. It was purchased, as defendant verily believes, with Porter's own money, without any arrangement or understanding of any kind, and defendant presumes that he holds it as he does any other of his property, claiming and exercising the right to do with it as he pleases, a privilege guaranteed by law to every owner over his own property. He denies that either the sale to Putnam or the deed of mortgage or assignment above mentioned were made to hinder, delay, and defraud his creditors, or that the same is fraudulent or void. He states some of his creditors, such as Putnam, Pilkington's executrix, Porter and Butler, Norman Porter, and others, and all whom he consulted prior to executing the deed,

approved and ratified it. He says that he knows of none who disapproved of it or rejected the benefit of its provisions. Some have accepted of it in writing, as will appear by the Exhibits Nos. 3 and 4, herewith filed as parts of this answer. Others have accepted of it verbally, for which he refers to the answers of the various defendants. The creditors have never availed themselves of the privilege of appointing a trustee, having confidence, he presumes, in the correctness of his management of the mortgaged effects. He would further state that from the proceeds and collections made of the mortgaged effects he has paid the debts due to John Keller, Porter and Butler, Mrs. Martha Carr, Higgins, Cockran and Co., Ned Williams, James Devers, Ewing and Cromey, E. W. Craig, E. and S. Steadman, and Walter Carr, and said persons have no longer any interest in the said deed and in this suit, and it is therefore prayed to be dismissed as to them. The said deed was executed by defendant at the times it bears date; was shortly afterwards carried and deposited by him for record in the clerk's office of the Fayette county court after due acknowledgement by him, and there left to be first recorded and then withdrawn by the parties, entitled as other deeds are usually done. Defendant will now proceed to answer the special allegations and interrogatories in complainant's bill. He states that he has already set forth the terms and conditions of the sale of goods from defendant to Putnam. They were sold for the sum of $7,038 13, to be paid to the creditors of defendant, as specified in Exhibit No. 1, heretofore referred to. He denies that said Putnum is prosecuting the business of said store for the use or benefit of defendant in whole or in part, except so far as he expects that his compensation as manager may be increased or diminished as the profits of the business may be large or small. He does not expect this from any arrangement with said Putnam, but from his own notions of what is right and proper between them and what is common in such cases.

Exhibit No. 1.

Will show how said Putnam was to pay for the goods, Putnam paid no money for said goods at the time of the sale, but has paid several of said debts since. Defendant states, that previous to said purchase by Putnam, defendant was alone interested in said store, and since not interested at all, except as above stated. He utterly denies that Putnam ever had one dollar of his money in his hands at any time, either to be used for defendants benefit or for any other purpose. If he ever had any money, choses in action or other property in his possession belonging to defendant, it must have been some trivial matter not now remembered. But to answer the interrogatory as it was really intended, he utterly and entirely denies, that he took the money or property of any description belonging to said Winter, and placed the same for his use or benefit in said Putnams hands. The debt of $1,201 97 to said Putnam, arose

in this manner: defendant had for some time been the agent of Putnam in sells cards, &c., manufactured by said Putnam. His salary for said agency was $150 per annum, he made sales frequently to his own customers, and thus debts due to Putnam, would become mingled with debts due to himself, and he would charge himself to Putnam with the amount thus mingled, to be paid by him when collected from the purchaser. The said $1,201 97 except $341 thereof, money received by defendant as agent of Putnam, and due to him was the amount of the mingled debts then unliquidated, and the same amount was embraced in the choses in action due to defendant, and thus the same was ballanced.

He states that the said agency in selling cards, the sale of said goods, and his present agency in managing the store of said Putnam, are the only unsettled accounts between them, and were the only ones at the fileing of complainants bill. He says that he has seen and carefully considered the answer of said Putnam to complainants bill, and the same contains a full and complete disclosure of all the dealings and transactions between them according to his best remembrance.

Defendant states, that all he knows concerning the purchase of the Sexton debt by Norman Porter, is derived by information from said Porter, and he verily believes the facts concerning it are set forth in the answer of said Porter, it was not purchased with defendants money, nor at his instance and request; nor is it considered as paid and satisfied between them. He refers to Porter's answer on the subjects and adopts it. He says that he has carefully read and considered said Porter's answer to complainants bill; and it contains a full and candid disclosure of all the pecuniary transactions between them, according to his best remembrance, and he refers to the same and adopts it. He denies that said Porter holds or ever did hold directly or indirectly any money choses in action or other property real or personal, for defendants use or benefit, or subject to defendants present or future control or management, otherwise than is stated in said Porter's answer. But to meet fully and directly complainants enquiry, according to its real import. He denies utterly and entirely, that he ever abstracted property, choses in action or money belonging to said E. J. Winter, and placed the same in said Porter's hands for his own use and benefit, or subject to his future management and control, and he most utterly denies, that he ever made use of said Porter, as a means of converting anything really belonging to Winter to his own use. Defendant denies that he has or ever had any interest whatsoever, directly or indirectly in the grocery store of Stephen Swift, that he never furnished him with money or means of any description, for carrying on said grocery business in any shape whatever. That said Swift has not and never had any money or property of defendant in his hands or possession, or under his management or control, so far as he remembers if he ever had, it was some trivial matter, which has escaped defendants recollection. He has read and carefully con-

sidered the answer of Stephen Swift, and he remembers two pecuniary transactions between them, not noticed in said answer. He in partnership with said Swift, purchased a lottery ticket, cost ten dollars, and drew ten dollars, which after the usual deductions was paid to them, and by them equally divided; the other transaction was as follows: when defendant and Charles Winter were conducting the store of E. J. Winter as above set forth, they wished to purchase some groceries at Samuel Pilkington's sale; and wishing to get the benefit of the longest credits, defendant in the name of Winter formed an arrangement with Stephen Swift, by which, whatever each purchased should be put down in the name of Swift and the note of Swift & Winter given for the whole, but each to pay for the articles he purchased and received. The purchases were accordingly made, and the notes accordingly given, and each received the articles belonging to him, and when they fell due, each paid his proper part of the said notes. This whole matter is fully explained upon said Winter's books. It was a transaction in the name of Winter, but conducted by defendant as his manager and agent, with these two transactions, the answer of said Swift contains a full and complete disclosure of all the dealings and transactions between them, so far as he has any remembrance, and if there were others, they were trivial in their nature and amount, and have escaped his recollection. He denies that he ever took money, choses in action of property of any kind belonging to said Winter, and placed the same in the hands of said Swift for his use or benefit or subject to his future management or control, or that in any shape or way he made Swift, the means of converting what belonged to Winter to defendants use. In regard to this defendants brother, Abel Wheeler defendant would say, that he has read and carefully considered said Abel's answer to complainants bill, and said answer sets out correctly the amount in which defendant is indebted to said Abel, also the terms and amounts of the several loans or advances made him; and the manner in which the same are to be repaid, and the evidences of them. By the request of Abel, he has filed with his answer, several letters received in due course of mail from said Abel, relating to these loans, their amount, &c., defendant states most unequivocally, that they were real genuine loans, and of money really belonging to said Abel; and the debt is now truly and *bona fide* due to him. He utterly denies, ever having placed money or property of any kind or description in said Abel's hands, for defendant's use or benefit, or subject to his management or control, present, future or past, or to answer said bill, according to its real import, he utterly and unequivocally denies, placing in said Abel's hands, money, property or choses in action, or indeed any thing belonging to said Winter to be held by him for defendants use or benefit, or subject to his management or control, or in any other manner, made use of said Abel to convert what belonged to Winter to his own use.

And this defendant would once again, and for all, state, that every intimation or charge, either made in said bill or out of doors, that the defendants, by the instrumentality of his friends, or in any other manner or way whatever, directly or indirectly, ever defrauded said Winter out of a single dollar, or any thing else, is unqualifiedly and unequivocally false; and if there be language which can convey a more complete and full denial of every such intimation, he claims the right, by amended answer, of using it. He says that Abel Wheeler, at one time, conducted an oil mill in Lexington; at that time, this defendant was connected with said E. J. Winter, and some advances were made from Winter's store for the purchase of flax and hemp seed, &c. for said oil mill; and the said advances were repaid by sales of oil. All of this fully appears by the books of said Winter. When Abel Wheeler left Kentucky, he left some accounts, growing out of said oil mill, in his hands for collection. A portion of these were collected in Commonwealth's paper, and with it a stud-horse, called Whig, purchased. This horse was stood for a while, and then sold by defendant, all on account of said Abel Wheeler: this, however, was a transaction in which defendant had funds of Abel in his hands, and not of the character which seem to have been sought by complainant's bill. So far as his remembrance extends, these transactions are all of any moment which have ever taken place between defendant and said Abel; there were, certainly, none of the character which the bill seems to suppose.

To the interrogatories contained in complainant's amended bill, defendant would answer: That the debt due from Putnam, on the purchase of the stock of goods, is not a part of the aggregate given in said deed of assignment. There has been a schedule of the debts made out a short time before the deed of assignment was executed, and has remained with himself, for the inspection of his creditors, until a person should be designated to receive it. He did collect debts, purchase the said stud-horse Whig, stand him and sell him, as agent of Abel Wheeler. This business was transacted in the name of Abel Wheeler, the principal; he never transacted any other business in his name, as he remembers. A part of the money advanced to defendant by said Abel Wheeler, was loaned out, for a short time, for Abel's benefit, but the loaning was done in defendant's own name. He says that, since the rendition of the judgment, in Virginia, in favor of complainant, this defendant placed in the store of E. J. Winter about $2,200, and the store was conducted in the name of E. J. Winter; this was in the year 1818. Afterwards, he sold to E. J. Winter his room furniture, consisting of a few articles of small value, which were necessary to his economical comfort. He also sold a mare which he once owned, and placed the amount to his credit in E. J. Winter's store. He conducted the store of E. J. Winter in E. J. Winter's name, in partnership with Charles Winter, as above stated; and while the store was so conducted, there was a connection formed with David

H. Bosworth in the manufacture of janes, which connection was conducted under the name of E. J. Winter.

These transactions are all, so far as he remembers, made to prevent executions being levied on property of which he was owner, to satisfy these old debts. All of them being made to the real complainant, he presumes no further particularity is necessary in setting them forth. They were not made, as he conceives, with any fraudulent view; but with the view of ultimately benefitting said creditors.

Defendant has endeavored to answer, according to their true spirit, fully and completely, all the allegations and interrogatories of the original and amended bill. He does not pretend to such accuracy of memory as to enable him to say that he has stated every thing, but he can say nothing is omitted from a desire of concealment; nothing kept back which he conceives at all material to complainants cause; and if any thing is omitted, it arising from frailty of human memory, which is unable to retain, vividly, all the events of twenty years. Defendant denies that the real complainant comes into equity with clean hands: he denies his right to retain this claim against him; and, finally, upon the merits, he denies that complainant has any right to equitable relief. He prays that said Winter shall be compelled to receive his $1,000, and surrender this claim; and fully answered complainant's bill, he prays to be hence dismissed, with his costs.

Defendant would state one other transaction which occurred between himself and Norman Porter, which he did not recall to his memory during the writing of the foregoing part of this answer. Some time about 1831 or 1832, defendant and Porter purchased a lot of wool, and sent to Livermore & Kendal, of Boston; and made by the transaction a profit of $64 20 each, as appears by Porter's books, which defendant has this day consulted. Defendant's impression is, that his share of the profits was entered to his credit in E. J. Winter's books, but not having the books before cannot state certainly.

FAYETTE, *ss.*

This day, Leonard Wheeler made oath before me, a justice of the peace for said county, that the allegations of the foregoing answer, so far as stated upon his own knowledge, are true; so far as stated upon the information of others, he believes to be true.

Given under my hand this 16th day of October, 1838.

F. McLEAR, *J. P. F. C.*

The following are copies of the exhibits referred to in the foregoing answers, marked Nos. 1, 2, 3, and 4.

No. 1.

For and in consideration of Leonard Wheeler having bargained, sold, and delivered to me his entire stocks, as according to the in-

voice and bill of sale this day handed me, amounting ($7,038 46) I do oblige and bind myself to said Wheeler, to pay the following debts due by said Wheeler, to wit: $150 to James West, a colored man; $300 to Michael Croin; $600 to Phill Breckenridge, a colored man; $156 to Walter Carr, Sen.; $2,594 91 to Abel Wheeler; $183 82 to Henry Madison, a colored man; $1,633 77 to the Kentucky Association; $619 43 to Mrs. E. M. Brooks; and I do hereby bind myself to pay for all the goods ordered or purchased by the said Wheeler which have not yet been received by him. I am to pay the price the said Wheeler agreed to give the persons from whom he purchased.

[L. S.] As witness my hand and seal this 25th day of November, 1837.

JOSEPH PUTNAM.

JOHN C. PALMER,
THO. E. BOSWELL, *Witnesses.*

No. 2.

MR. LEONARD WHEELER: SIR: That there may be no misunderstanding growing out of our conversation this afternoon, I will say in writing, that I did not possess myself of the judgment against you from motives that are of themselves improper, that it was not to make money out of it at the expense of any *bona fide* creditors, that have confided in you since you commenced business on your own account nor shall a dollar of their property be forcibly taken to satisfy that judgment. The object I had in obtaining control of that debt, was to pursue the enquiries I am about to make under the cover of a foreign creditor and would not have been, nor will it be made public, that I am the litigant unless you choose to make it so, had I not procured the control of that claim, I should have instituted other proceedings which would have been more unpleasant than the present need be.

Lou., November 6, 1837.

I am &c., ELISHA J. WINTER.

No. 3.

We approve and accept of the benefit of a deed of mortgage made by Leonard Wheeler to ourselves and others, dated the 27th of January, 1838, without hereby intending to release said Wheeler from personal responsibility for the debts due us.

New York, 17th April, 1838.

Signed and sealed in presence of JOHN HALSEY, JR.

RICHARD HENRY HAIGHT,
WM. A. WHITE,
ALEX M. WHITE,
G. G. WHITE.

No. 4.

We accept and approve of a deed of mortgage executed by Leonard Wheeler for the benefit of ourselves and others on the 27th day of January 1838, not however releasing Wheeler or any one else from the obligations personally to pay the debts due us. We desire him to continue the management of the mortgaged property for our benefit so far as our debts are concerned.

MARSAILLES & MARTIN.

The answer of Abel Wheeler to a bill in chancery preferred against him in the Eight Circuit Court of the United States for the Kentucky District by John Tompkins.

Your respondent excepting to so much of said bill as seeks to subject him a resident of Massachusetts to the jurisdiction of your honorable court yet wishing to answer so much of said bill as seeks to effect him, says, that in the year 1835 he was informed by his brother Leonard Wheeler, that he had commenced business in Lexington with a prospect of success, and that he desired to borrow of your respondendent some fifteen hundred dollars. In answer to those applications on the 16th day of November, 1835 he replied to him by letter informing him when and upon what terms it could be made. The original letter is in the hands of said Leonard Wheeler, and he has desired him to file it as a part of this answer, which he doubts not will be done, and when so filed he prays that it may be taken and considered as a part of this answer.

In pursuance of said letter your respondent about the 1st of January, 1836, sent said Leonard Wheeler $300 about the 3d of May, 1836, he honored and paid his draft on respondent in favor of Vantvinkle & Randal payable at N. C. Pierces counting room. About June 12th 1836 he honored and paid similiar drafts one in favor of Marsailles & Martin for five hundred and ninety-one dollars and seventy-eight cents, and the other in favor of G. Haight & Co. for two hundred and eight dollars and twenty-two cents, during the same period he paid twelve dollars to Maj. Weston for said Wheeler, also paid $1 75 expenses of Randalls draft. On the day of March 1836 he paid seventy-two dollars for a shearing machine for said Leonard. About the 6th of September, 1837, he further paid into the hands of R. & H. Haight for said Leonard Wheeler and at his request $1,000. These with interest from the time said advances were made, constitute his claims against said Leonard. In relation to these loans various letters passed between said Leonard and respondent in which they were promised by respondent and acknowledged to have been received by said Leonard, such of those letters as he considers material will be filed. He has no other memorandum of said debt than those acknowledgments, which he considers ample, and is advised, are sufficient in law. He would state, that these loans were made out of his own

money and not out of money previously placed in his hands by said Leonard Wheeler, and the amounts there mentioned are justly and truly due him. The only other pecuniary transaction he ever had with said Leonard was this respondent leaving in the hands of said Leonard about the year 1821 some debts due him in Kentucky to collect, what was received on them was paid in Commonwealths paper, and with it said Leonard bought a stud-horse called Whig. This however is a matter, with which plaintiff can have no connection he is advised that it is unnecessary to go into its minute details. He further states, that he was informed by said Leonard Wheeler of the proceedings taken by one E. J. Winter, in the name of complainant to break him up in business, and the necessity he was under in securing those, who had trusted and aided him, and so far as respondent was concerned he approved, and ratified all that done by said Leonard for that object. He claims the benefit of all provisions made in his favor and prays the protection of the court in their behalf. He would state, that no exact time was ever agreed upon for the repayment of the loans aforesaid, they were to be repaid upon reasonable notice when required.

ABEL WHEELER.

STATE OF MASSACHUSETTS,

SUFFOLK, *Boston, August 17th*, 1838.

Then the abovenamed Abel Wheeler made solemn oath to the truth of the foregoing statement, by him subscribed before me,

ALDEN BRADFORD, *Justice of Peace.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

I, Charles A. Parker, clerk of the court of common pleas, the same being a court of record in *in* the county of Suffolk, do hereby certify that Alden Bradford, Esq., is a justice of the peace in and for said county, duly commissioned and qualified, having authority to administer oaths, &c., and that his signature within written is his true and proper signature.

[L. S.] Witness my hand and the seal of said court, at Boston, this 17th day of August, 1838.

CHAS. A. PARKER, *Clerk.*

The following are the exhibits referred to in the foregoing answer, to wit:

BOSTON, *April* 19, 1836.

To LEONARD WHEELER, *Merchant, Lexington, Ky.*

DR. BROTHER: Yours of March was received long time ago, and I have been dowdling about finding some money and when I could get more, till I fear I shall give you little enough time to get it to answer your purpose in New York. Brooks Wheeler has sold his farm, and is to receive pay on the 15th May, when he promises to

pay me $700 dollars; this, with $300 I have on hand, and which I know I can trust myself to keep, will enable me to answer to a call for $1000 at that time; but if the $700 should fail, I should want two or three days to pick it up; so you better make your calculation to get it to New York only on the 20th. Either draw or let me know in what form to remit, and write the name plain. Is it R. & H. Haight, New York? I had 800 more due about the first of this month, which I intended you should have, but as it is in hands of friends I cant press in this pressing time; money is worth 1 1-2 and, in some instances, 2 per ct. a month, good, $500 of the 8 is paying me 10 per cent.; probably I shall have some more 4th July. The committee have been poking over the schools till I dont know what to hope or fear; one spell I expected to be a farmer next August, now I suppose I shall hang on another year; I am not anxious about it. Mackintosh has got into a squabble with his reading master. I was obliged to write a long communication to the committee, charging one of them with a lie; rather warm times; soon be over.

Your brother, ABEL WHEELER.

Brother Major is getting the shoemakers' bench ready about these days. I will pay it. Shoe-pegs are from $1 50 to $3, average 2.00, put up in barrels of a kind. Thread, 1-2 bleached, No. 3, 69 cents, 6 months; green, No. 10, 59 cents, 6 months. There is all the business; now a little chat. Glad to hear Lucias' babe is pretty, for that will keep its father good natured; but then its mother will take pride to herself. I am glad, too, that Sarah is home-sick, for she will always be better contented in her forlorn state. I am glad that you are not deprived of the last blessing to offer up thanks for; you tell me to guess what it is—guess? Why I knew almost fifty years, and gave thanks as heartily as you, and now I believe I am just as happy huzzaing for 'tother side. I suppose I must make my mouth to offer thanks one of these weeks for what you would consider a left-handed blessing; I dont feel half so cross about it as wife expected. I should never mind, as old Lydia Gage said, "every one must have her number sooner or later, married or single." We take ours married and soner; you may have yours later and single; then see if your blessing wont begin with a c——. Father has let his farm to William, except trees; he has not got over his shingles quite; he thinks he can see farther into a mill-stone than both his sons, because he did not sell his pig and depend on Kentucky hogs.

BOSTON, *November* 16*th*, 1835.

MR. LEONARD WHEELER, *Lexington, Ky.*

DEAR BROTHER: Yours by Swift was received night before last, and I waited till to-day expecting to see him, but I cant find him. You say you have postponed taking an account of stock for several days, hoping to hear from me. I am sorry that I did not rightly

understand you; your words are "If I should require the amount named, I shall like to know soon." I supposed you were to determine whether your business would require the amount named. I could have answered then as well as now; indeed you ought to have considered my previous letter an answer. I can let you have the $1,500 or $2,000 at the times you name, viz: half at new-years and half in April, or if you come on in January or earlier, as I hope you will, I suppose I can get it; I say suppose, because last week was a hard one for money, and I dont keep it on hand much; a good deal of stock was offered Saturday, and went off 2 or 3 per cent. lower than the Saturday previous. Without disturbing any one, I can spare, say 5th January 400, 5th February 500, 5th April some; but whenever you want it, I dont doubt I can get it without difficulty; as to security, give what you please, I am satisfied with you, and would rather have your word than half the names in Kentucky. I have never received but 6 per cent., but 9 may be had here, 12 is given on short time. What has got Putnam and family. You Lexingtonians seem to me a very fickle minded set of mortals. All the Winters' *after* their minds as often as the winds shift. Sarah swore she would come with Swift, Putnam was coming before Swift; and lo! and behold! all happens rather end foremost. I hope you will stick to your determination to do a safe and easy business. Ellen came on from Philadelphia with her new husband of Bill's picking out; staid with us Saturday; went out to Cambridge, taking wife and Jot with them; so I am a happy old bachelor again. Uncle Charles has lost his election, poor man, $200 out of his pocket; Jackson and anti-masons carried their ticket in Middlesex for Senators; should not wonder if the State should go for the litte Dutchman if they choose electors by general ticket. Every thing goes on smoothly at Lincoln. Father is as fresh and fat as at 24; lots of pumpkins and apples, and corn and potatoes. My health is better and better; 1300 ruils are better than 1200, though I may be more unwilling to leave it. Will write again by Swift. In haste,

A. WHEELER.

LEXINGTON, *March* 9, 1836.

MR. ABEL WHEELER, *Boston, Massachusetts.*

DEAR BROTHER: I received a letter from Putnam by last mail, in which I am advised of his having drawn on you for $72 00, in payment for a shearing machine, I requested him to purchase for our factory, I am not sure, but I fear, I have neglected to inform you that it was possible he would call on you for this amount, and by such neglect, also fear you were not prepared to meet it without inconvenience. I had little or no expectation that he would find one made, and if ordered presumed I should have had sufficient time to remit the payment before it would be completed. The consequence of having made an arrangement for the sale of a

large lot of jeans coats and pantaloons, I have concluded to go on as a partner in the jeans factory with Bosworth, and we are now turning out some of the finest goods ever made in the State, with this machine we shall improve their appearance and value.

I am now engaging crops of wool and in some cases making cash advances, I shall however have sufficient for my business between this and the 20th of May, when my purchases in New York become due, and unless my sales exceed my expectations, I shall then want assistance from you or the banks here, whatever sum you may have to spare at that time, or previous you may remit to R. & H. Haight, New York, to be placed to my credit, or if you prefer I can draw on you for such amount and at such time as you may name. If you have it on hand and its not drawing interest, I shall be allowed at the rate of eight per cent. per annum discount on my account, if paid before due.

I wrote brother Major a few days ago, requesting him to purchase and send me *to* patent shoemakers benches he was *was* praising very highly when I was in Lincoln, please refund him. I forgot to name in my last, that Lucia has another little girl, a great beauty of course, she and the baby uncommonly well; indeed she improves upon practice, Sarah is absolutely childishly home-sick, she has less patience, less true philosophy, which enables us to bear up under the various vicissitudes of life, than any one of her age and acquirements that I was ever acquainted with, if she had a peevish husband something like yourself, and half a dozen children, Lord bless me what a house! I continue to offer up sincere thanks for one blessing—guess what that is.

Enquire the price of shoe pegs by the bushel. I expect they can be had cheaper in Boston, than in New York; also coarse shoe thread, one and a half bleached No. 3, and green No. 10, by the bale, or 100 pounds each, some of the larger shoe dealers on Market street, can give you the prices. Affectionate regards Churluth.

Your brother,

LEOD. WHEELER.

LEXINGTON, *October* 6, 1835.

Mr ABEL WHEELER, *Boston, Mass.*

DEAR BROTHER: Yours of the — August, was duly received; the liberal sentiments it contained, and the generous proposal to aid me in the prosecution of my business, demanded an earlier acknowledgment, but really until a few days past, I have been undecided on all matters relating to the future, and have put off writing until something definite was fixed on. After a connection of near nineteen years, Mr. Winter and myself are about to separate. He has returned from New York, has given up his New Orleans project, is more violent in his denunciations of this place than ever, and is fully determined on selling every particle of his property here, and leave the town and perhaps the State; not succeeding in the sale

of the whole stock of goods to one person, we are now selling at reduced prices for cash; this plan I foresee will terminate very disadvantageous to mine and Charles' interest, unless Mr. W. makes up the loss to us which he promises. Charles and myself had at one time determined on removing to Vicksburg, but being disappointed in procuring a house, was obliged to abandon the plan.

For a long time past we have nearly monopolized the hatting, fur, and trimming business of the place; also the shoemaking materials. The sales of two amount to about $10,000 per annum, both afford fair profits. This portion of the stock I shall retain and carry on for the present on my own account, and probably shall continue an interest in our janes factory, which though not as profitable as it has been is well worth pursuing, shall also keep our stock of hemp, hackles, sleys, &c., connected with bagging and rope business, these four interests will keep me in easy employment and furnish a safe and good support with little or no risk of loss of capitol. We have not lost on this portion of our business for last twelve years half of one per cent on sales.

We have $32,000 due us from about 600 different persons, of course it will require a long while to close such an amount, and on our success in collecting depends my future operations.

It is only within ten or twelve days that I have determined not to leave here, in that time I have had four propositions made me to form a partnership, none of which however exactly please me; at present there is not a store to rent in the town. If Mr. W. should sell the old house to some one who will rent, I may except of one offer and continue in our present business. On the whole I incline to the belief that it will be more prudent to wind up the old concern before entering on a large new concern.

In course of next week we shall take account stock of the factory concern, when I shall conclude about retaining an interest in it. If I should decide on doing so it will require more cash capital during the next year, than I can furnish without borrowing; it takes cash to purchase wool in the spring for the whole years supply, and sales are only made during the three fall months, and then on long credit. At present there is no difficulty in borrowing money from our two new banks on four months, paying a part at maturity and renewing for balance, this does very well for the present, but in case of a change of times which I am looking for, and intend providing against, I shall wish to borrow from $1,500 to $2,000 from some one who will not require bank punctuality, or rather for a length of time not less than two years; for this sum I will pay seven per cent. interest, and give good personal security, together with a policy of insurance on my life effected in Philadelphia, for $2,000.

I don't know whether you recollect David Bosworth, he married Mrs. John Hull's sister, and carried on the wool carding business at old man Bosworth's mill down the creek below Royle's; he is our partner in the jeans business; he is an industrious honest yankee,

he don't owe a dollar and is worth in land and machinery I suppose about $8,000. He will join me in the note I suppose, for I never asked him; I can give Winter, Porter, or Boswell, I will not ask Swift or Putnam, and would rather not as to the others; without security I will not take a cent. The reason I offer seven per cent. is that it is a trifle only, more than we pay the banks, and not as much as we have to pay individuals; I can lend money on the best security at eight, nine and ten per cent.; if you want to lend a $1,000, I get you nine per cent. with eight good names, in all worth $200,000. We bought a slave to prevent his going down the river and are permitting him to work on his own account, and when we are paid he is to be free. We all united on a note and give nine per cent., eight is enough.

Within the last week I have arranged one of my old debts for $2,000, which with the exception of the Boston claims, and I care little or nothing about them, is the last but one that I can find a holder for, and this one has never once asked me if I wanted to pay for fifteen years. I have concluded to let the whole subject rest as you advise, and never make another effort.

You see my plans are not yet permanently adopted, but you here have a sketch of all my thoughts on business; if I should require the amount named I should like to know soon, so that I may make my arrangements. I can secure it any time, but shall not absolutely require, say half at new years, and half in April, unless I should come on to New York in January, which is probable for furs, if so I shall go on and see you, and then want the whole amount, enough.

Don't you think Putnam is crazy, he has sold out all his furniture except Susan's calico pattern quilts, rented his house, and will leave here with all his family for Boston and Lincoln, in course of two or three weeks, the family to remain two or three years to learn yankee manners and habits, he to return and mend up his old houses and fences, I have the explanation for him in full; I rather expect Sarah will accompany them, Swift also talks of going on latter end of this month, but no knowing, Porter returned a day or two ago, Jane with Swift's, you must hear Sarah abuse the Kentucky; I can't understand these Lincoln girls, they don't know on which side their bread is buttered. Wilcher has sent a long talk by Putnam, about the salvation of your soul, I hope he can recollect a half Sarah S——rs, she will go with Swift.

I must write very soon, certainly by Putnam or Swift. Father I hope has got through harvest and so forth in good health. Let me hear from you soon, love to Charlotte and Bob, and all others as well as yourself.

Yours, &c.

L. W.

Mr. Abel Wheeler, *Boston, Mass.*

LEXINGTON, *July* 18*th*, 1836.

DR. BROTHER: Yours of May 7th, by Porter, and of 27th, by mail are received. I have acknowledgments from Marsailles & Martin and others, of the receipt of $1,000 00 on my account through you, my business having been much better than I contemplated, it would have been when I applied for your assistance, I have not had occasion to use hardly half of the amount, $500 of it is in a note at 6 months at 10 per cent, and $300 at 1 per cent per month perfectly safe. It is possible I may require a part or the whole in December. If however, you have occasion to use it, or can invest it on better terms than the above; I will remit it on short notice. I am perplexed to account for causes of our cousins failure, neither Mary, yourself, nor the Tarbells pretend to shew any, they must have managed badly in their manufacturing business; for I cannot suppose fraud in the case without proof. Industry, even-like theirs, without judgment and frugality, cannot succeed in rearing up a fortune. What do they propose doing now? Where is Marshall and what is he about? Thanks without number and blessings innumerable to you, to nature, to Charlotte or to whom; for I am reversed in these matters, a son is born unto the house, and his name shall be called Thomas. I was astonished at your proposition to give him any other name for the paltry consideration of $1,000, payable when he should arrive at the age of 21; no, I will not give you or yours my old shoes if you do not call him Thomas the second, you may call Leonard on your own terms, the third Amos, Abel, Abanijah or anything else you and the other party may agree upon; I am sure the mother will not quarrel with me for this expression of my wishes upon the subject, if she does, I will yet carry my threat into execution, go to work and help myself.

Nothing relative to family affairs has pleased me as much for some time (after the above little concern,) as to hear that father has given up the farm, while he remains in the old house, he will always find enough to do to occupy his mind and time, without the laborious work he has been accustomed to, whether he makes any money or not be sure and keep a few dollars in his purse, and charge me half for all, so it is done. The boys here are thrown into great consternation this morning, by receiving a requisition from the Governor, for 1,000 mounted volunteers to join General Gaines on the Sabine; and if the number is not made up by volunteers in course of four weeks, a draft from this division, or a call from whole companies will be made. Thousands have volunteered to aid the Texians, and I do not believe ten will turn out in defence of our own country against the same enemy. Indeed many are beginning to use the Hartford Convention doctrines, that the general government have no right to require the militia to march out of their own State. Oh consistency! patriotism, where art thou'? You know I can look on and laugh legal—indeed, this is a serious business, I do not believe 500 out of the 1,000 will return, nor 100 out of a thousand of those that have gone to Texas. We have

doleful accounts of the prospects of our emigrants. Putnam is now in Tennessee, he will return and start eastward in a few weeks. Swift talks of going on in 10 or 15 days, if so, Sarah will go with him, and glad enough she will be, Winter will do well with his cotton after all. Lucia and Sarah are crazy for a letter from Jane, none for 6 weeks they say. Porter and myself will make $1,100 on our wool purchase, indeed my whole business has outstripped my expectations, love to Charlotte, Mary and the little one.

L. WHEELER.

MR. ABEL WHEELER, *Boston, Mass.*

LEXINGTON, *May 5th*, 1836.

DEAR BROTHER: Yours of the 19th ulto. is received $1,000, the amount you propose lending me is amply sufficient for my purposes, and allow the $300 to remain where it is at 12 per cent. The $300 you have on hand, and which you say you know you can trust yourself to keep, I have drawn for, favor Vanwinkle & Randall, New York, at 5 days sight, payable at A. Pierces counting room. I stated, I presumed it would be paid at sight. The reason I made it payable there is, that I have forgotten the street and number of your residence.

When the remaining $700 is in my hand, I wish you would remit in check or draft $491 78 to Marsailles & Martin, Philadelphia, and the balance $208 22 to George Haight & Co. New York. If more convenient or agreeable, you may authorize each to draw on you at such time as you can pay, naming at what place you can be found, thread and pegs cheaper in New York.

At present I do not forsee that my business will require any furter aid, unless I should conclude to accept the agency of two jean's factory's, if so, they will require considerable advances for purchase of wool, as it will be required only until the period of sales, I can obtain any amount for this object from the banks. My business thus far has more than equaled my expectations. My commissions on which I placed little or no reliance, will I expect pay more than all my store and personal expenses. Mr. Winter arrived here a few days ago from New Orleans, remained three days only, left for New York, where he will take the packet of the 16th for Liverpool, he has shipped about 2,300 bales of cotton, on which he expects to realize a profit of $40,000; and if prospects are favorable, he goes prepared to speculate on a large scale in Europe. His letter from Mr. Clay and the Kings of New York, will introduce him to high political circles, and his commercial letters are of the first character.

Porter, who I presume is now in Boston, has informed you of old lady Hulls death, caused by being thrown from a rail-road car, it will be a terrible shock to Susan, Putnam will return in June or July. Will enquire the price of 5 fold worsted harness twine of Thomas Tarbell & Co., 55 Water street. I have made a proposi-

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tion to Porter to join me in a purchase of coarse wool, if you see him, say to him that he must not neglect to write me fully, as several manufactures will suspend their purchases, until they hear the result of his operations, I have sent you several papers lately, in which you will see that patriotism so called, is not yet extinct here; within the last few days, seventy odd men have volunteered to aid Texas, and about $2,000 in cash subscribed.

About half of the young men are respectable young men, I shall not be surprised if there is some breaking out before starting time. Am pleased to hear father has rented out the farm, it is the best plan he could have adopted, tho' I expect he will work just as hard as he did before. If I could order matters my own way, you would find me joining my thanks with yours, in what you suppose I shall consider a left handed blessing; just manage affairs so as to keep up the family name, one generation more, and I shall probably remain en statu quo; otherwise I may try a hand myself, tell Charlotte if she will come here, I will give her a blacky nurse. Love to all.

L. WHEELER.

The answers of James Devers, Catharine Huggins, executrix of Samuel Pilkington, deceased, Higgins, Cockran & Co., Ewing & Croney, Porter & Butler, and E. & S. Steadman, to a bill in chancery filed against them in the United States circuit court for the district of Kentucky by John Tompkins.

These respondents excepting, &c. for answer, say, that at the time of the assignment of Leonard Wheeler for the benefit of themselves and others, said Wheeler was justly and *bona fide* indebted to them in the sums mentioned in said deed of mortgage or assignment. They were advised of the necessity of said Wheeler's securing them, and were informed of his intention of securing them before the deed was executed and approved of, and accepted the benefit of its provisions. Since that time they have been paid their debts in full, except said Catharine Huggins, whose debt remains unpaid, and for the protection of which she prays. She says that her agent was consulted with concering said deed before it was executed and accepted of its provisions, and she prays her rights under it may be secured. Having entire confidence in said Wheeler's management, they never appointed a trustee to receive his effects, nor desired one to be named.

FAYETTE COUNTY, *to wit:*

Personally appeared before the undersigned, a justice of the peace for said county, James Devers, W. K. Higgins, James Butler, Samuel Studman, James Cromey, and made oath that what is contained in the above bill is true to the best of their knowledge and belief.

Given under my hand this 12th day of October, 1838.

F. McLEAR, *J. P. F. C.*

FAYETTE COUNTY, *ss.*

This day Catharine Huggins made oath before me, a justice of the peace for said county, that the allegations of the foregoing answer, so far as stated upon his own knowledge, are true; so far as stated from the information of others she believes to be true.

Given under my hand this 20th day of October, 1838.

WM. B. SUMMERS, *J. P.*

The answer of Joseph Putnam to a bill in chancery, filed against him and others in the circuit court of the United States for the Kentucky district by John Tompkins.

This defendant, reserving the benefit of all exceptions to the jurisdiction of the court and the misrepresentations in the said bill contained for answer to so much thereof as he is advised to be material for him to answer, says, that on the 25th day of November, 1837, he purchased of Leonard Wheeler his store of goods on Main street, in Lexington, at the price of $7,038 13, which sum he undertook to pay to certain creditors of said Wheeler as named in a writing obligatory which he executed to said Wheeler upon the sale being made and a bill of sale executed by Wheeler, (a copy of which is herewith filed,) possession was delivered to him by said Wheeler, and the same has been in his possession and the store by him conducted ever since. He employed said Wheeler as his agent and manager to conduct the store and manage its concerns. There was no agreement as to compensation for his services, but on the winding up of the business he expects to settle fairly with him. He denies so far as he knows or believes that this sale was made by Wheeler to defraud or deceive the creditors of Wheeler, but on the contrary to secure his creditors, and those creditors whom he considered as having about the highest claims upon him, their just dues. He says the goods were sold at a fair price and upon valuable consideration. No money was paid at the time, but since that time several of the debts mentioned in said obligation have been paid by him, to wit: Walter Carr's debt, $10 50, the debt to the Kentucky association, $1,533 77, and Mrs. E. M. Brook's, $619 63; the balance remain unpaid. He denies that Wheeler has at this time, or has had since said sale, any interest or benefit in said store other than as his manager and agent. He denies that he, defendant, had any interest in said Wheeler's store previous to said purchase, and he states that he has had the sole interest since that purchase. He presumes that by borrowing and purchasing on credit Wheeler furnished the entire capital for said store previous to said purchase, and the entire capital has been defendant's since that time. He says that Wheeler was his agent in selling cards, &c. manufactured by him, and in selling cards to his customers the debts due to him would become mingled with debts due to Wheeler. With the amounts of the debts thus mingled Wheeler would charge himself as indebted to defendant, to be paid when the amounts were col-

lected from his customers. The debt of $1,201 97 except $341 thereof, money received by Wheeler as agent of defendant and due him, was the amount of the debts thus mingled when the said deed of assignment was made, and the aggregate of debts due Wheeler are contained an equal amount, being the amount of cards sold Wheeler's customers, and the whole being in Wheeler's name. He allowed Wheeler $150 for this agency in selling cards. He says that for a number of years Wheeler was the manager of E. J. Winter's store in Lexington; that for a number of years he dealt with said store, purchasing most of his goods at it. Through that store and chiefly by the agency of Wheeler he purchased wire for his card factory, until he established a credit to the eastward, and purchased directly from that point. He says that he has been long intimate and friendly with said Wheeler, and friendly offices were interchanged between them without profit or reward given or expected, and he has been in the habit of advising with said Wheeler in any matter of difficulty arising in his business, and Wheeler has sometimes assisted him in his correspondence, all of which was without profit to said Wheeler, and done as such things are usually done by one friend for another. Such matters as the above, the agency of Wheeler in selling his cards, his agency in managing and conducting the store of defendant, and a general agency in superintending his interests and business while he was absent from the State for some time compose all the dealings and transanctions between Wheeler and himself that he can now recall to his memory. Defendant utterly denies that he has ever had the use and employment of money or property belonging to said Wheeler, or that Wheeler ever placed in his possession money or property belonging to said Wheeler or any one else to be held or used for his own or said Wheeler's use. But to answer complainant according to what he presumes to be the real meaning of the bill, he utterly and unqualifiedly denies that Wheeler ever placed in his hands or possession money or property of any description or any thing else belonging to E. J. Winter, to be held or used either for said Wheeler's or defendant's use or benefit, and every intimation of the kind is utterly false. He would, however, state that there were several instances of lending and borrowing between himself and E. J. Winter's store. Defendant believes, however, that he lent to said store much oftener than he borrowed, for all which he refers to the books of E. J. Winter's store. He would moreover state that every dollar thus lent or borrowed was repaid before the closing of said Winter's store, and in some short time after the borrowing or lending took place. Defendant says that he knew that complainant had obtained his judgment before the sale of the goods of Wheeler to him, and at the time of the sale said Wheeler stated to him that his object was to secure his new creditors in the payment of their just debts. This he understood to be the object at the time, and he viewed it a just and meritorious object. Defendant thinks proper to state that in the course

of the long period that Wheeler was acting as agent of E. J. Winter's store he has repeated heard him express his most implicit confidence in the integrity and entire satisfaction with the conduct of said Wheeler in the management of his business, in which opinion defendant then and now fully concurs.

FAYETTE COUNTY, *ss.*

This day Joseph Putnam made oath before me, a justice of the peace for said county, that the allegations of the foregoing answer, so far as stated upon his own knowledge, are true; so far as stated from the information of others, he believes to be true.

Given under my hand this 16th October, 1838.

F. McLEAR, *J. P. J. C.*

Bill of Sale above referred to, to wit:

For and in consideration of Joseph Putnam's having assumed and undertook to pay the sum of seven thousand and thirty-eight dollars and thirteen cents on certain debts due and owing by me, as specified by his obligation to me of this date, I have bargained and sold unto him, said Putnam, my whole stock of goods, as contained in the foregoing invoice, and I do further transfer, assign, and sell unto him all goods of every kind which I have purchased, and are now being brought or on the way to me, he, the said Putnam, undertaking and agreeing to pay the price I have agreed to pay to the persons from whom I purchased them.

Witness my hand and seal, this 25th day of November, [L. S.] 1837.

Signed, LEONARD WHEELER.

Attest:

JOHN C. PALMER,
THOS. E. BOSWELL.

To the honorable the Judges of the Circuit Court of the United States for the Eighth Circuit, and Kentucky District.

Your orator, John Tompkins, a citizen of the State of Virginia, would respectfully ask leave to file this as amendment to his original bill. Your orator states that R. & H. Haight, Wm. H. White, Alex'r. M. White, citizens of the State of New York, Marsailles & Martin, and Ben Slater & Co., citizens of Pennsylvania, George M. Chambers, a citizen of the State of Illinois, Joel Wallingsford, a citizen of the State of New Hampshire, Abel Wheeler, a citizen of the State of Massachusetts, Mrs. E. Brooks, a citizen of the State of Mississippi, all of whom your orator charges are parties to said pretended assignment or mortgage, and all of whom (except the two latter, who are creditors of the second class, and Slater & Co., who are not enumerated as of either class,) are creditors of the first class, and are and were at the time of the filing of the original bill

in this cause citizens of the States respectively as above set forth and alleged, and without and beyond the jurisdiction of your honorable court, so that the process of the court could not have been and cannot be served upon them; but your orator states all the other defendant's creditors of both the first and second class, and who are parties to said pretended mortgage or assignment, are citizens of the State of Kentucky, and within the jurisdiction of your honorable court, and your orator calls on said Wheeler, Putnam & Porter to answer on oath the subjoined and annexed interrogatories as put them respectively. And he prays that by a decree of your honorable court the said deed of mortgage or assignment may be set aside, annulled, and held for naught, and the property conveyed therein to the said defendants may be made subject to the payment of the judgments obtained by your orator against said Wheeler hereinbefore in the original bill set forth. Your orator is advised that the said pretended assignment or mortgage was made without the knowledge or assent of the several and respective assignees therein; that they did not before the filing of the original bill herein accept and assent to the same, and that the said assignment or mortgage is null and void for fraud, and if it shall appear to the court that the assignees or any of them defendants had not at the time of the filing of the original bill herein assented to and accepted the pretended assignment or mortgage aforesaid; that the same as to such as did not assent to and accept the same before your orator filed his bill be declared by a decree of this court null and void as to your orator, who is a judgment creditor. And if it shall appear that all the assignees assented to and accepted said assignment or mortgage at any time that the same may be declared void as to your orator for fraud, the same having been, as your orator charges, made with intent to deceive and defraud the just creditors of said Wheeler, of whom your orator at the time of executing the same was one, and your orator again prays for general relief.

J. T. MOREHEAD,
For Plaintiff.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, November term, 1838, came the complainants aforesaid, by their counsel, and on his motion leave is given him to amend his original bill herein by inserting other defendants, which amendments were made accordingly.

And afterwards, to wit, on a subsequent day of the term, and year last aforesaid, "came the complainants, by their counsel, and on his motion, it is order, that the order entered up herein at a former day of this term, dismissing the complainant's bill against Mrs. E. Brooks, be set aside, and it is further order, that the complainant's have leave to amend their bill by making the said Mrs. E. Brooks a defendant thereto, which was done accordingly.

And afterwards, to wit, at rules held as aforesaid, in the month of December, and year 1838, came the complainant, by his counsel, and filed the following exceptions to the answers of Wheeler and Swift, to wit:

The complainant excepts to the answer of the defendant, Wheeler, offered by him to be filed. 1st. Because it is not sufficiently responsive to the bill. 2d. Because great part of the statements contained in it are irrelevant and foreign as to the matters sought to be disclosed. 3d. Because it does not state any thing in reply to that interrogatory in the bill which requires him to answer whether he has any property choses in action, &c., other than those contained and referred to in the mortgage, but passes that wholly unanswered. 4th. Because it answers matters not set forth in the bill, and as to which he is not therein interrogated, and does not answer matters to which he was interrogated. 5th. Because other parts of it are *impertinent* and evasive. Wherefore, and because, no sufficient cause has been shown for setting aside the rule taking the bill for confessed, and permitting the said answer now to be filed, the plaintiff, by his counsel, objects to its being filed.

J. T. MOREHEAD,
For Plaintiff.

The complainant also excepts to the sufficiency of the defendant Swift's amended answer. 1. Because it also is evasive and impertinent. 2. Because it sets forth no facts not known to the defendant at the time his original answer was filed.

Wherefore, and because, no sufficient cause is shown for permitting an amendment to the original answer; the complainant, by his counsel, objects to its being filed.

J. T. MOREHEAD,
For Plaintiff.

And the complainant says that the matters and things contained in the aforesaid (Wheeler's and Swift's excepted, and which have been excepted to) so far as they contradict the allegations of his bill, are untrue, and that the allegations of his said bill are true, and *dedimus* are awarded either party to take depositions.

And afterwards, to wit, at rules held as aforesaid, in the month of March, and year aforesaid, (until which time this cause was continued on the rules) came the complainant, by his counsel, and on his motion, it is ruled, that the amended bill be taken for confessed against the defendants therein named.

And afterwards, to wit, at rules held as aforesaid, in the month of April, and year last aforesaid, came the complainant, by his counsel, and set this cause for hearing.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1839, came the complainant, by his counsel, and on his

motion, leave is given the marshal to amend his return on the spa. herein, by striking out "*a free man of color*" in said return.

And on the following day of the term, and year aforesaid, came the defendants, by their counsel, and on his motion, this cause *has* remanded to the rules, it having been improperly set down for hearing.

And afterwards, to wit, on a subsequent day of the term, and year last aforesaid, came the complainant, by his counsel, and moved the court for leave to file a bill of revivor against the executors of Walter Carr, deceased, and an amended bill against other defendants, which motion is laid over.

And afterwards, to wit, on a subsequent day of the term, and year aforesaid, came the parties aforesaid, by their counsel, and the court being now sufficiently advised of, and concerning the complainants motion to file a bill of revivor against the executors of Walter Carr, deceased, and amended bill against other defendants, do order, that said complainants have leave to file the aforesaid bills, which was done accordingly; and, on motion, leave is given the defendants, Thomas H. Pindell, Prest, & Co., and Charles Carr, and W. C. Carr, executors of the last will of Walter Carr, deceased, to file their answers herein, which was done accordingly.

To the Honorable the Judges of the Circuit Court of the United States, 8th Circuit and Kentucky District:

Your orator, John Tompkins, by way of amendment to his original bill in this cause, that since the last term of this court, Walter Carr, one of the defendants in this suit, has departed this life, and that letters testamentary have been granted by the county court of Fayette, where the testator resided and died, to Charles Carr and William C. Carr, and that they are now the executors of the last will and testament of the said Walter. Your orator prays that this suit may be revived against them, and that they may be compelled to answer the original and amended bills of your orator herein. The said Charles Carr your orator charges to be a citizen of Kentucky, and a resident of Fayette county, the said William C. Carr being a citizen of Missouri.

Your orator further states, that Henry Madison, one of the parties to said assignment, was dead at the time the same was made by said Wheeler, and that he was a slave when alive, as your orator is informed and believes, and that Philip Breckenridge, who is also a party to said deed of trust, is also a slave, and that no contract with, or conveyance to them by the said Wheeler, can be, or is valid by law.

Your orator further states, that the said Joseph Putnam, who is one of the defendants in the suit, is now and has been during the

pendency of the same, selling off goods, wares and merchandize, mentioned in the said assignment or deed of trust. And your orator verily believes that it is important, to secure to him the effectual execution of any decree that your orator may obtain in the premises, that the said Putnam may be restrained and enjoined from selling or disposing of the same; that if the said Putnam continues to dispose of them until the whole are placed beyond the reach of your honorable court, he will be left wholly without remedy for any decree that may be rendered in his favor in this cause.

Your orator further states, that the said Wheeler, professing to be the agent of Putnam, is paying off the debts secured by said assignment in whole or in part, to such of the said creditors as he thinks proper to pay, and according to his own statements in his answer, has retained the possession of all the effects mentioned and conveyed by said assignment, no trustee having been appointed by said creditors according to the provisions of the said deed. And your orator verily believes that great injury and injustice will be done to him if the said Wheeler is permitted to pay off the said debts pending this suit, and manage the said property and effects conveyed as aforesaid. He therefore prays your honors, the premises considered, that the said Putnam and Wheeler may be restrained and enjoined from selling or disposing of the goods and chattels and property mentioned in, and conveyed by said assignment; that they be delivered into the hands of the marshal, to await the further order of this court, or that your honors would make such further order as may be consistent with the justice of the case. And he also prays that said Wheeler may be restrained and enjoined from paying off said debts as trustee or mortgagor or otherwise, and that a receiver may be appointed to hold and manage the effects and property in said Wheeler's hands, or such other order as your honors may deem proper and just. And your orator will ever pray, &c.

MOREHEAD and HORD,
For Plaintiff.

May term, 1839. Sworn to in open court, by Elisha J. Winter.
Attest: JNO. H. HANNA, *C. C. C. K. D.*

The separate answer of Thomas H. Pindell, president of the Kentucky Association, to a bill and amended bills in chancery, filed against the Kentucky Association, in the 8th circuit court of the United States in and for the district of Kentucky.

The respondent, for answer, says: That Leonard Wheeler was indebted to the "Kentucky Association for the improvement of the breed of stock," of which I am president, in the sum of $1,553 77, on the 8th day of November, 1837; the whole of which sum was paid prior to the service of the of the process of the court. Having therefore no further demand against the mortgage or deed of trust

executed by said Wheeler, your respondent begs the bill, as far as regards the said association, to be dismissed.

T. H. PINDELL,
President Kentucky Association, &c.

COMMONWEALTH OF KENTUCKY, *Fayette County, sct.*

The foregoing answer of Thomas H. Pindell, was this day sworn to by him; that the matters therein stated as of his own knowledge are true, and those depending upon the information of others he believes to be true.

Given under my hand, this 8th day of May, 1839.

DAN. BRADFORD, *J. P.*

The separate answer of Charles Carr, Wm. C. Carr, executors of Walter Carr, deceased, to a bill and amended bills in chancery, filed against the said Walter, and revived against these defendants, in the 8th circuit court of the United States in and for the district of Kentucky:

These respondents, for answer, say: That the $1,000 and $105 notes, with the interest, was paid in March, 1838, by said Wheeler; therefore they pray, as executors, to be dismissed without costs.

C. CARR, *for himself, and by power of attorney, for* W. CARR, *his co-executor.*

8th May, 1839.

COMMONWEALTH OF KENTUCKY, *Fayette County, sct.*

This day Charles Carr appeared before me, a justice of the peace for said county, who made oath that the statements made as of his own knowledge are true, and that those stated upon the information of others he believes to be true.

Given under my hand, this 8th day of May, 1839.

DAN. BRADFORD, *J. P.*

And afterwards, to wit, at a subsequent day of the term and year aforesaid, (May term, 1839,) came the complainant, by his counsel, and on his motion, it is ordered that this cause stand revived against Charles Carr and Wm. C. Carr, the executors of the last will and testament of Walter Carr, deceased, in the same plight and condition that it did at the death of the said Walter Carr.

And afterwards, to wit, on the 20th day of May, 1839, the following *alias plurius spd.* issued, to wit:

The United States of America to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon James West and Michael Crow alias Michael Croin, to appear before the judges of our 8th circuit court of the United States of America, in and for the district of Kentucky, at the capitol, in the town of Frankfort, on the first

Monday in July next, to answer a bill in chancery exhibited against them and others, in our said court, by John Tompkins, surviving partner of John Tompkins and Adam Murray; and this they shall in no wise omit, under the penalty of four hundred dollars each; and have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, [L. S.] hath caused the seal of our said court to be hereunto affixed, this 20th day of May, A. D. 1839, and in the 63d year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

"Executed on the defendant, Michael Crowinn, misnamed Crow, alias Croin, June 7, 1839. J. West not found—no inhabitant.
ANDREW J. McCALLA, *D. M. K. D.*"

And afterwards, to wit, at rules held as aforesaid, in the month of June, and year last aforesaid, (until which time this cause was continued on the rules,) came the defendants, Leonard Wheeler, Jos. Putnam, and F. L. Turner, by their counsel, and filed their answers herein, which are as follows, viz:

The answers of Leonard Wheeler to an amended bill and interrogatories filed against him in the 8th circuit court of the United States for the Kentucky district, by John Tompkins.

This respondent, reserving, &c., for answer says: That he does not admit that the assignees or mortgagees, mentioned in his deed of mortgage dated 27th January, 1838, did not assent to the same before the filing of the original bill. He knows, of his own knowledge, that some of them agreed to it before the same was executed. On that subject he would state, that when the claim of complainant was prosecuted, and before and after judgment was obtained, he informed the creditors who were at hand that he would, by an assignment of his property, protect and secure them in the payment of their debts. How many he so informed, or the particular individuals whom he conversed with, he cannot now designate, but he mentioned it often, and the existence of the claim of complainant was almost universally known to the creditors of this respondent in Kentucky; and he believes it was as generally known to them that he intended securing the payment of these debts out of the means belonging to him; and so far as this respondent knows or believes, all who knew of his intention approved and assented to it; all with whom he conversed certainly did. When the deed was executed it was deposited without delay in the clerk's office, and was freely spoken of among those whom he had dealings, and indeed among his acquaintances generally; and he believes there were but few of his creditors provided for, in the State of Kentucky, to whom the mortgage was not known before the filing of complainant's bill; and he knows of none

that knew of it who did not approve of it. About the period of executing said mortgage, Norman Porter, Pilkington's executrix, Joseph Putnam, Higgins, Cockran, & Co., and James Devers, he remembers conversing with on this subject, all he thinks prior to making the mortgage, and certainly before complainant's bill was filed, and all approved and assented to it. He denies that there was any fraud in said deed.

In answer to complainant's first interrogatory, he states that he has had almost numberless conversations on the subject of this claim, and of assigning respondent's property to other creditors in preference to this claim. He is unable to remember all that passed, or the purport of what was said in these conversations, but he states that many persons advised him to assign his property to other creditors and prevent complainant or rather E. J. Winter from getting any thing. He was often so advised, as there was much excitement among his friends, on account of the conduct of Winter on the subject. This respondent remembers telling E. J. Winter, that he intended assigning his property to his creditors to secure them, and that he would place him last; this was in an angry and excited interview between them, caused by unjust and unfounded suspicions being expressed by said Winter concerning the conduct of respondent.

In answer to complainant's second interrogatory, he exhibits a schedule marked H, which was made out on the 6th of November, 1837, when he sold out his store to James Putnam; no additional debts recrued to respondent between that time and the 25th of November, 1837. The writings were not entered into until the 25th of November, but the bargain and invoice was made out as of the 6th of November previously. This schedule was not exactly accurate, being taken from the books of respondent, and in several of the accounts the balances depending on contra accounts in the hands of the debtors. These are designated in the schedule as nearly as may be; when they were accurately adjusted the balances turned out to be consideraly less than $17,430 26, but how much he could not say without considerable calculation which he is advised to be unnecessary. He also exhibits schedule G, made out on the 27th January, 1838, which is liable to the same remarks made concerning schedule H. At those periods he had under lease the store he occupied on Main street, Lexington, which was leased of Miss Margaret Parker, through her agent, John M. McCalla; this lease was unexpired, when he sold to Putnam, and no new writing drawn, but Putnam pays the rent since the sale of the stock of goods to him, and he is now tenant of the same, though he does not know the views of Miss Parker on that subject. He also had a lease by the year on a room in a house of Gen. Leslie Combs, which lease he still holds and uses as a lodging room. It is in Lexington, at the corner of Short and Market street, in the second story of a house called by the name of Babylon. The said schedules, with the exceptions above named, embraced all the property of defendant liable

at law or in chancery, to the payment of his debts. He intended to include all, and if any thing is omitted, it has escaped his recollection and was unintended.

In answer to the third interrogatory, he states that Norman Porter's answer on the same subject contains all he knows or has been informed, or believes about the Sexton debt.

In answer to fourth interrogatory, he states that Henry Madison died in Frankfort, in the year 1833. Your respondent is the administrator of his estate, and is indebted to that estate the amount set forth in the mortgage; that amount will go to his child who is an infant.

In answer the fifth interrogatory, he states that he believes the books of E. J. Winter will show what become of the amount which was placed by him in said store; he would not undertake to state without seeing those books, any thing more particularly about them than he has. It is nearly twenty years since the matters have passed by, and he has only indefinite recollection concerning them. His present recollection is that the whole amount was not brought into Winter's store at once, but at different times. He is advised that it has nothing to do with the present controversy.

In answer to the sixth interrogatory, he states that the debts specified in the mortgage, so far as paid were paid by respondent in part as agent of Putnam and out of Putnam's means and partly as mortgagor and out of the mortgage funds. All that have been paid have been since the execution of the mortgage and some before and some since the bill of complainant was filed. The following have been paid by Putnam, or in other words by respondent as agent of Putnam; James West, $50 in part; Michael Croin; Walter Carr; Kentucky Association; Mrs. E. M. Brooks, as mortgagor; Walter Carr; W. A. White; R. & H. Haight; Marsailles & Martin; Pillespie & Jones; Ben Slater & Co.; Martha Carr; Higgins, Cockran & Co.; Ned Williams; George M. Chambers; Alexander White; Joel Wallingsford; James Devers; E. W. Craig; John Kellar; Porter & Butler, $151 81; Cromey & Earing; E. & S. Steadman.

In answer to seventh interrogatory, he states that the choses in action, &c., remains in respondent's possession, and except as collected and paid over to mortgagees have so remained ever since. Having fully answered, he prays as in his original answer.

LEONARD WHEELER.

FAYETTE COUNTY, *ss.*

This day Leonard Wheeler came before me, a justice of the peace for said county, and made oath that the statements made in the foregoing answer, so far as made on his own knowledge are true, and so far as made on the information of others, he believes to be true. Given under my hand, this 15th April, 1839.

F. McLEAR, *J. P. F. C.*

The answer of Joseph Putnam to interrogatories put to him by John Tompkins, in a suit depending against him and others in the eighth circuit court of the United States, Kentucky district.

He states that so far as he was concerned he assented to the mortgage of Wheeler to his creditors, dated 27th January, 1838, both before and after it was executed, and before the filing of complainant's bill.

In answer to first interrogatory, he states that he has paid by his agent, L. Wheeler, James West, $50, and Michael Croin, $300, in addition to the sums paid as stated in his former answer. These payments were made in pursuance of his obligation to Wheeler, and out of his own funds. The stock of goods purchased by him were not, as he conceives, trust funds, the sale being absolute, and immediate possession given.

In answer to second interrogatory, he states, that he never did. Having fully answered, he prays to be hence dismissed with his costs, &c.

JOSEPH PUTNAM.

FAYETTE COUNTY, *ss.*

This day Joseph Putnam made oath before me, that the statements of the foregoing answer so far as stated on his own knowledge are true, and so far as stated on the information of others he believes to be true.

Given under my hand as justice of the peace for said county this 15th day of April 1839.

F. McLEAR, *J. P. F. C.*

The separate answer of F. L. Turner a deft in the aforesaid suit. This deft for answer to so much of the complainants bill as concerns him to make answer to. He answers and says, that he is the holder of a joint and several promissory note for the sum of $1,200 made by Jno L. Winter, Charles C. Winter, and Leonard Wheeler on which there was paid the sum of $300. That for the balance of said note with the interest accuring thereof he holds the said makers responsible. That to so much of said complainants bill as respects a certain deed of assignments made by said L. Wheeler to secure the payment of certain debts to certain persons therein named of whom this responded is name as one of them. This deft. answers that he was never consulted advised with or informed of the making of said deed by said Wheeler or any one for him, nor did he ever know, that such deed had existence until within the last two weeks he was informed of it. That he has never accepted of the provisions in said deed nor made any trustee therein nor in any manner done any act in pursuance of said deed of assignment. That there is not any other matter or thing in the said deed or bill, which the respondent is advised it is material or necessary for him specially to make answer to and prays to be hence dismissed with his reasonable costs. May 9, 1839.

F. L. TURNER.

STATE OF KENTUCKY, *Franklin County, sct.*

This day F. L. Turner personally appeared before the undersigned a justice of the for said county, and made oath, that the statements contained in the foregoing answer so far as made of his own knowledge are true, and so far as made from the information of others he believes them to be true. Given under my hand this 9th day of May, 1839.

ROBERT C. McKEE, *J. P.*

And the complainant says, that the statements made in the answers of Carrs executors, T. H. Pindell, L. Wheeler, J. Putnam & F. L. Turner, so far as they contradict the statements made in his bills are untrue, and the allegations of his said bills are true.

And afterwards, to wit at rules held as aforesaid in the month of August and year aforesaid (1839) came the deft. Norman Porter by his counsel, und filed his answer to the amended bill, to wit:

The answer of Norman Porter to the interrogatories put to him in the amended bill of John Tompkins against Leonard Wheeler and others in the 8th Circuit Court of the United States for the Kentucky District.

This respondent says, that as to the charges contained in said amended bill. He is advised, that they relate to other defendants and that it is unnecessary for him to answer thereto, except to require proof so far as his rights may be concerned. As to the 1st Intery, put to him. He answers and says, that the purchase of the debt due from L. Wheeler to F. & J. Sexton was made of Francis Sexton surviving member of said firm.

To the 2d Interry. He answers and says, that he herewith files a copy of the assignment of said debt from said Sextons, which is all the written evidence he has of said debt except what may be contained in the acknowledgment of said debt in L. Wheeler's answer. Wheeler has verbally acknowledged said debt to him. He believes the above mentioned was executed on the day it bears date and he received it from Wolfe & Clarke of New York his friends and correspondents.

To the 3d Inty. He answers and says. That he is informed and believes, that Francis Sexton of the firm of F. & J. Sexton was living at the time of the purchase of said debt as above mentioned in the city of New York. He does not know whether or not he is now living or where.

To the 4d Inty. He answers and says, that he had information before the purchase aforesaid, that the Sexton's had failed and had made an assignment for the benefit of creditors, and that probably the debt on Wheeler was in the hands of the assignee. He requested his friends, Wolfe & Clarke, to negotiate the purchase of the debt from the proper persons. They applied to John Haggerty of New York as he believes who negotiated the purchase from F. Sexton as the present owner of it. As a part of this answer

copies of the letters of Haggerty to Wolfe & Clarke and of Wolfe & Clarke to this deft. are herewith filed. From which letters this deft. believes that Francis Sexton was at the time of said purchase and assignment the true owner of said debt and legally entitled to assign it. This respondent has heard, that one McCall was the assignee of the Sextons and has also heard, that McCall now resides in Europe. His first name he does not know; in the above answer the deft has given all the information he has on the subject. January 5th, 1839.

NORMAN PORTER.

STATE OF CONNECTICUT, *Hartford County, ss.*

Berlin, January 5th, 1839.

Personally appeared Norman Porter a person well known to me, whose name is hereunto affixed, and made oath to the foregoing interrogatories and answers included in the foregoing bill. That the same are true as they stand stated.

In testimony of which I hereto affixed my notorial seal.

DANIEL DUNBAR, [L. s.]
Notary Public.

And and afterwards, to wit, at rules held as aforesaid in the month of September and year last aforesaid, came the complainant by his counsel and says, than the answer of Norman Porter so far as it contradicts the allegations of his bill are untrue and that his said bill is true.

And afterwards, to wit, at rules held as aforesaid in the month of October, and year 1839, came the complainant by his counsel and on his motion. It is ruled, that the complainants bill be taken for confessed against the deft. Michael Crownin, and the said complainant set this cause for hearing.

And afterwards, to wit at the November term of the court aforesaid in the year 1839, came the parties aforesaid by counsel and leave is given Leonard Wheeler to file his answer to the last amended bill, which is done acccordingly and for replication to said answer, the complainant says, that the statements in said answer are untrue, and that the allegations in his said amended bill are true.

And by agreement, the following is to be entered *of* recorded:

The genuineness of the debts provided for in Wheeler's assignment, will not be contested or called in question in the argument of the cause by the plaintiff. No advantage will be taken of the failure or insufficiency of any of the defendant's answers, except those of L. Wheeler, Swift, Porter, Putnam, and Abel Wheeler.

All exceptions to depositions, except for incompetency of any part of the statements, waived. There may have been some of the creditors who may not have answered the bill; and some who have answered, have not responded to all the allegations of the bill and amended bills. By above agreement, defendants waives all questions as to the formal preparations as to them, and complainants

place those not answering on the footing of Carr's executors, and others similarly situated, and those who have answered, as not being called on for further answers than they have given. Whereupon, this cause came on to be heard upon the bill answers and exhibits; but there not being time to go through with argument, it is adjourned over until to-morrow morning.

Answer to last amended bill above referred to, to wit:

The answer of L. Wheeler to the last amended bill of John Tompkins, filed in his suit in chancery, against respondent and others, in the eighth circuit court foi the Kentucky district.

This respondent says that Henry Madison was not a slave, but a free man of color, who died, and respondent became his administrator, as appears from the certificate herewith filed, marked No. 19, and the amount mentioned in said mortgage is the amount in which he, as administrator, stood indebted, and the same justly belongs to said Madison's infant child.

Philip Breckenridge is a man of color, in whom Mary H. Breckenridge has a life estate; but after her death, he is to be free, as your respondent has been informed, by the Breckenridge family. He was permitted, as your respondent has been informed, by his mistress to accumulate to himself some little money and property; and the money due from respondent to said Philip was originally placed in the hands of E. J. Winter, and was transferred to respondent when their connection dissolved. Respondent considers the debt he thus owes, one of the highest in moral obligation, and one so binding upon his honor, that, without regard to its legal validity, he should pay it out of his last amount. If Philip Breckenridge is not entitled to it, he presumes his mistress is—to be disposed of by her as she may think proper. Since the last answer, the wool account between this respondent and Norman Porter has been nearly closed. As stated in the mortgage and Porter's answer, said wool account was a joint purchase of wool made for a speculation. When the wool was bought, the money was raised by the discount of a note of Norman Porter for $4,240, with respondent as security. The wool came to your orator's possession; and as money was received from sales of the wool or jeans, into which it was manufactured, it was paid on the said note, whereby it was reduced from time to time, until, at the time of said deed of assignment, there was only about $1,480 due on said note, and that amount was to be paid, by proceeds of said wool, in the hands of Ewing & Cromey, Hunt & Paddock, J. J. Anderson. The wool on hand, and the amount due from your respondent for moneys received, after the payment of said note, Norman Porter was entitled to one-half the profits. The accounts of Ewing & Cromey, Hunt & Paddock, J. J. Anderson, and wool on hand, formed a part of the debts embraced in said deed of assignment, as will be seen by the list filed. The note in bank has been reduced to $300; and has been reduced by collections of these wool accounts, and

the whole amount is nearly settled. From all, it will appear that there was about $1,700 due from your respondent, of which, only $300 remains due to the bank, and $210 to N. Porter, for his share of the profits; of which, $200 has been paid to Porter, as will appear by an estimate herewith filed, marked No. 20, and the notes taken up in branch bank, marked No. 21, 22, 23, 24, and the certificate of letter of branch bank, marked 25. And being advised he is fully answered, prays, &c.

CROSLEY & JOHNSON.

STATE OF KENTUCKY, *Fayette County.*

Before me, a justice of the peace in and for the county aforesaid, personally appeared Leonard Wheeler, and made oath that the facts set forth in the foregoing bill are true, so far as depends upon his own knowledge, and so far as depends upon information derived from others, he believes to be true.

Given under my hand this 4th day of November, 1839.

JAMES L. HICKMAN, *J. P.*

The following are the exhibits, in order, as referred to in the foregoing answer, viz.:

No. 19.

FAYETTE COUNTY, *to wit:—October Court*, 1833.

On the motion of Leonard Wheeler, who took the oath required by law, letters of administration is granted him on the estate of Henry, a colored man, deceased, who executed bond in the penal sum of four hundred dollars, with Robert J. Breckenridge his security, conditioned as the law directs.

Copy attest: J. C. RODES, *Clerk.*

No. 20.

Jeans, &c., on hand, belonging to wool concern, Ewing & Cromey.

2 bales from Bailey & Co.,	say $165 00	
1 bale from Dudley, 145 yds.	" 90 00	
		$255 00
Hunt & Paddock, St. Louis, about - - -		170 00
J. J. Anderson, " " - - -		130 00
Wool on hand " - - -		200 00
Ewing & Cromey, sales jeans received	1,308 33	
Paid Carmon's account - -	842 63 by L. W.	
		465 70
Norman Porter owes balance - - -		36 74
Leonard Wheeler, for sales jeans, say - -		300 00
		1,557 44

Balance due by L. W. on account - - -	342 59
	1,900 05
Note due the bank - - - - -	1,480 09
Profits - - - -	419 94

Dec. 12, 1837.

No. 22.

$850 00. LEXINGTON, *August* 18*th*, 1838.

Four months after date, we jointly and severally promise to pay to the order of the President, Directors & Company of the Bank of Kentucky, eight hundred and fifty dollars, value received, negotiable and payable at the Branch of the Bank of Kentucky, at Lexington.

NORMAN PORTER,
LEONARD WHEELER,
JOSEPH PUTNAM.

No. 23.

$650 00. LEXINGTON, *December* 21, 1838.

One hundred and twenty days after date, we, Porter & Butler, and Leonard Wheeler, principal, and Joseph Putnam, sureties, jointly and severally promise to pay the President, Directors & Company of the Bank of Kentucky, or order, six hundred and fifty dollars, without defalcation, negotiable and payable at their branch bank in Lexington, for value received.

Witness our hands.

PORTER & BUTLER,
LEONARD WHEELER,
JOSEPH PUTNAM.

Exhibit No. 21.

$1,168. *April* 18, 1838.

One hundred and twenty days after date, we, Norman Porter, principal, and Leonard Wheeler, Joseph Putnam, sureties, jointly and severally promise to pay to the President, Directors & Co. of the Bank of Kentucky, or order, one thousand one hundred and sixty-eight dollars, without defalcation, negotiable and payable at their branch bank in Lexington, for value received. Witness our hands,

NORMAN PORTER,
LEONARD WHEELER,
JOSEPH PUTNAM,
Per LEONARD WHEELER.

No. 24.

$400. LEXINGTON, *April* 23, 1839.

Four months after date we promise to pay the President, Directors and Company of the Bank of Kentucky, or order, four hundred dollars, negotiable and payable at the branch of the Bank of Kentucky at Lexington, value received.

LEONARD WHEELER,
JOSEPH PUTNAM,
By LEONARD WHEELER.

No. 25.

I do certify that a note of Norman Porter, with L. Wheeler security, for 4,040 dollars, was numbered as follows, to wit:

Original note,	1836, Aug. 10,	to	N. Porter and L. Wheeler,	$4,240	
2d No.	do 1834, Dec. 10,	do	do	3,500	
3d "	do 1837, Apl. 12,	do	J. E. Boswell,	2,500	
4th "	do 1837, Aug. 13,	do	do	2,250	
5th "	do 1837, Dec. 15,	do	do	1,480	09
6th "	do 1838, Apl. 17,	do	J. Putnam,	1,168	
7th "	do 1838, Apl. 19,	do	do	850	
8th "	do 1838, Dec. 21,	do	do	650	
9th "	do 1839, Apl. 23,	do	do	400	
10th "	do 1839, Aug. 27,	do	do	300	

Which last note will be due 27th December, 1839.

T. H. PINDELL, *Teller*,
Nov. 4th, 1839. *Lexington Branch Bank, Kentucky.*

And afterwards, to wit, on the next day of the term and year last aforesaid the following order was made, to wit:

This day this cause was finally heard, but the court, not being sufficiently advised, took time, &c.

And on the following day of the term and year last aforesaid, came the complainant, by his counsel, and filed a petition, and moved the court for a writ of *ne exeat* against Joseph Putnam; and the arguments being heard, and the court, being advised, do consider that the said motion be overruled.

To the honorable the Judges of the Circuit Court of the United States for the eighth Circuit and Kentucky District:

Your orator, John Tompkins, would respectfully state to the court that since the case, in which he is the complainant, and Leonard Wheeler and others are defendants, has heen argued and submitted to the court for a final decree, he is advised that no decree will be rendered by the court at this term, and consequently another vacation of the term will intervene before the cause is finally disposed of. Your orator states, that with a view to a final

trial of the cause at this term, he made admissions, contained in a paper filed in the suit, which he would not have made but for the purpose of expediting the trial and decision; and your orator further represents to the court that a postponement of the cause to the next term will, as he verily believes, materially jeopardize his interests involved in the suit. He states that the defendant, Putnam, who is one of the creditors of the first class specified in the assignment, and to whom, on the 25th of November, 1837, the defendant, Wheeler, sold his store in Lexington, has advertised for sale all his immovable property, and, as your orator believes, for the purpose of leaving the Commonwealth of Kentucky, and placing himself and his property beyond the jurisdiction of your honorable court; and your orator, moreover, believes that the said Putnam will take with him, if he leaves the State, all his goods and chattels and moveable property, leaving your orator wholly remidiless in the event that he should obtain a decree against the said Putuam, as he has prayed for in his original and amended bills, all which actings and doings of the said Putnam are manifestly calculated to elude the justice of this court and hazzard the rights of your orator in this cause to the extent, as your orator believes, of at least ($9,000) nine thousand. In tender consideration thereof, &c. your orator prays that your honor would grant to your orator the United States writ of *ne exeat*, &c., and that the said Putnam be required to give to your orator bond and sufficient security that he will not leave the commonwealth, that he will abide the justice of this cause, and perform whatever decree, — order this honorable court may make in this cause; and that your honors will make all such orders as require such a bond as the nature of his case may demand and its justice require. And your orator will ever pray, &c.

JS. T. MOREHEAD, *for Plaintiff*,
November Term, 1839.

Sworn to in open court by Elisha J. Winter, this 15th day of November, 1839.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, in the year 1840, the court being now sufficiently advised of and concerning the premises, do decree and order that the complainant's bill be, and the same is hereby, dismissed, but without prejudice to any other suit or proceeding by complainant against the said Leonard Wheeler, and any person indebted to him not made party to this bill, for the purpose of discovery and having whatever may be due from said debtors appropriated and paid to him the complainant in his said judgment at law.

And it is further ordered, that the complainant pay to the defendants their costs herein expended.

And on the following day, of the term and year last aforesaid,

came the complainant's counsel and prayed an appeal in this cause to the Supreme Court of the United States, which is granted him upon condition that he enter into bond, within thirty days, in the penalty of two hundred dollars, with Elisha J. Winter, his security, conditioned according to law, or some other sufficient security.

The above properly belongs to the record made out in the case of Tompkins *vs.* Wheeler, &c.; the record was made out by direction of complainant's agent previous to the above proceedings being had, which is the cause of this interlineation.

Attest: JNO. S. HANNA, *C. C. C. K. D.*

The following are the exhibits referred to in the original bill filed herein, viz:

UNITED STATES OF AMERICA,
Eighth Circuit, Kentucky District, sct.
November Term, 1837.

JOHN TOMPKINS, surviving partner of JOHN TOMPKINS & ADAM MURRAY, late partners, trading under the firm of TOMPKINS & MURRAY, Complainants in Debt.
against
LEONARD WHEELER & EBENEZER BRUDETT, Merchants, trading under the firm of LEONARD WHEELER & Co. Defendants.

It is ordered by the court that the confession and entering of judgment in this cause on yesterday be set aside; whereupon the defendant, Wheeler, by his attorney, withdrew his plea in abatement; and it appearing to the court that the *capias* has been duly served on the said Wheeler, and he failing to appear, on motion of the plaintiff's attorney, it is considered by the court that the plaintiff recover of the said Leonard Wheeler four thousand dollars, with interest thereon at the rate of six per centum per annum, from the 21st day of February, 1814, until payment, and three dollars seventy-five cents charges of protest; also eight dollars thirty-two cents costs; and also his costs herein expended. And it is agreed that execution on this judgment shall be stayed until the first day of February next.

THE SAME Plaintiffs in Debt.
against
THE SAME, Defendants.

It is ordered by the court, that the confession and entering of the judgment in this cause on yesterday be set aside. Whereupon, the defendant Wheeler by his attorney, withdrew his plea in abatement.

And it appearing to the court, that the capias has been duly served on the said Wheeler, and he failing to appear. On motion of plaintiffs attorney, it is considered by the court, that the plaintiffs recover of the said Leonard Wheeler the sum of eight hundred and ninety-one dollars fifty-three cents, with interest thereon, at the rate of six per centum per annum, from the 21st day of February, 1814 until paid, and three dollars and seventy-five cents, the charges of protest, and eight dollars and thirty-two cents costs, and also his costs herein expended. Execution stayed til 1st February next.

The following executions were issued on the foregoing judgments, to wit:

The United States of America, to the Marshal of the Kentucky District, greeting:

You are hereby commanded, that of the estate of Leonard Wheeler & Ebenezer Brudett merchants, trading under the firm of Leonard Wheeler & Co., you cause to be made the sum of four thousand dollars with interest thereon, at the rate of six per centum per annum, from the 21st day of February 1814 til payment, and three dollars seventy-five cents charges of protest, and eight dollars thirty-two cents cost, which lately in our 8th circuit court of the United States of America, in the district of Kentucky, John Tompkins, surviving partner of John Tompkins & Adam Murray, late partners trading under the firm of Tompkins & Murray, have recovered against them for defendant; also fourteen dollars eighty cents, which was adjudged to the said John Tompkins, surviving partner, &c., for his costs by him in that behalf expended, whereof the said Leonard Wheeler & Co. are convict, as appears to us of record, and that you have the same before the judges of our said 8th circuit court of the United States of America, in the district of Kentucky at Frankfort, on the first Monday in April next, to render unto the said John Tompkins surviving partner, &c., the debt and costs aforesaid, and have then there this writ.

In testimony whereof, Roger B. Taney Esq., Chief Justice of the Supreme Court of the United States of America, hath [L. S.] caused the seal of our said court to be hereunto affixed, this 15th day of February, A. D. 1838, and in the 62d year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshals return, to wit: "No property found to satisfy any part of this execution, Feb. 16th 1838.

JNO. M. McCALLA, *M. K. D.*

The United States of America, to the Marshal of the Kentucky District, greeting:

You are hereby commanded that of the estate of Leonard Wheeler & Ebenezer Brudett, merchants trading under the firm of Leon-

ard Wheeler & Co., you cause to be made the sum of eight hundred and ninety-one dollars and fifty-three cents, with interest thereon, at the rate of six per centum per annum, from the 21st day of February, 1814 until paid, and $3 75 the charges of protest, and $8 32 costs, which lately in our 8th circuit court of the United States of America in the district of Kentucky, John Tompkins, surviving partner of John Tompkins & Adam Murray, late partners trading under the firm of Tompkins & Murray, have recovered against them for debt. Also $14 80, which was adjudged to the said John Tompkins surviving partner, &c., for his costs by him in that behalf expended, whereof the said Leonard Wheeler &c. are convict, as appears to us of record, and that you have the same before the judges of our said eighth circuit court of the United States of America, in the district of Kentucky at Frankfort, on the first Monday in April next, to render unto the said John Tompkins surviving partner, &c., the debt and costs aforesaid, and have then there this writ.

In testimony whereof, Roger B. Taney Esq., Chief Justice of the Supreme Court of the United States of America, hath [L. S.] caused the seal of our said court to be hereunto affixed, this 6th day of February, A. D. 1838, and in the 62d year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshals return to wit: "No property found to satisfy any part of this fi fa. February 16th, 1838.

JNO. H. HANNA, *C. C. C. K. D.*

UNITED STATES OF AMERICA, *8th Circuit, Kentucky District, sct.*

I, John H. Hanna, clerk of the 8th circuit court of the United States of America, in and for the Kentucky district, do certify that the foregoing judgments and executions, and the marshals return therein, are truly copied from the records of the clerks office of the court aforesaid.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Whereas, Leonard Wheeler of the city of Lexington, and State of Kentucky, stands indebted as follows, to wit: Walter Carr of Fayette county, Kentucky, in the sum of $105 60. To Samuel Pilkingtons executrix in the sum of $1,000; to John Kellar of Woodford county, Kentucky, in the sum of $150; to Joseph Putnam of Lexington, in the sum of $1,201 97; to R. & H. Haight of New York, in the sum of $800 05; to Marsailles & Martin of Philadelphia, in the sum of $598 84; to Porter & Butler of Lexington, in the sum of $151 81; to Mrs. Martha Carr of Fayette county, in the sum of $26 77; to Higgins, Cockran & Co., in the sum of $244 69; to Ned Williams of Fayette county, in the sum of $237; to William A. White of New York, in the sum of $861 15;

to James Devers of Lexington, in the sum of $2,23 96; to Cromey & Ewing of Louisville Kentucky, in the sum of $137; to George M. Chambers of Illinois, in the sum of $240 55; to E. W. Craig of Lexington, in the sum of $450; To Alexander M. White of New York, in the sum $692 79; to Joel Wallingsford of New Hampshire, in the sum of $377; to E. & S. Steadman of Franklin county, Kentucky, in the sum of $300; and there are unsettled accounts between said Leonard Wheeler & Ben Slater & Co. of Philadelphia, and said Wheeler & Norman Porter of Lexington, upon the adjustment of which, said Wheeler may fall indebted to each of said persons, and they are hereby recognized as creditors of said Wheeler, for the accounts which shall be due them upon settlement, all of which aforementioned debts have been contracted by said Wheeler since he commenced doing business in this city, and being unprovided for, and declared to be creditors of the first class, and first to be paid out of the effects hereinafter conveyed, and whereas said Wheeler has heretofore sold and delivered to Joseph Putnam of the city of Lexington, all his stock of goods on hand, for the consideration of $7,038 13, which said Putnam bound himself to pay to the following persons, to whom said Wheeler stood indebted, to the amounts specified to be paid to them, to wit: James West, $150; Michael Croin, $300; Philip Breckenridge, $600; Walter Carr, senior, $1,056; Abel Wheeler, $2,594 96; Henry Madison, $183 82; the trustees of the Kentucky Association for the improvement of stocks, $1,53 77; and Mrs. E. Brooks, $619 63. And whereas said Wheeler also sold to said Putnam all goods which he ordered and had not then received, for and upon the consideration of said Putnam having assumed to pay for said goods to the persons from whom they were purchased, all of which creditors being provided for as aforesaid, are ranked, for the purposes of this deed, as creditors of the second class, and are next to be satisfied, should any deficiency occur in said provision, out of the effects he hereafter conveyed. Which debts of the first and second classes compose all the debts which said Wheeler has contracted in the prosecution or course of his business in the city of Lexington; and as all his present means and effects have been accumulated by means of the credit given him in the prosecution of his business, it is the intention of this instrument to give priority and preference to said creditors of the first and second classes, and over all others, on his means, effects, and property of every description, and all his rights, interests, choses in action, and dues of every description.

And whereas, also, the said Leonard Wheeler hath a sufficiency to pay off and discharge all said debts of his late contracting, and there will remain a surplus, which he desires to apply to his old debts, contracted upwards of twenty years since; and among said old debts he selects and gives preference to a debt which was due to the firm of F. & J. Sexton, for the sum of $3,120, with six per cent. interest

thereon from the 31st day of April, 1814, which debt was evidenced by said Wheeler's note of hand; and said debt has been assigned and sold to Norman Porter, of Lexington, of which said Wheeler has been notified, and which debt said Wheeler desires next to be paid out of the property and effects hereinafter conveyed. And said Wheeler is bound as security for Jno. L. Winter to F. L. Turner, in a note for about $900, which securityship he desires next to be discharged. And the said Wheeler, believing his present effects and property of every description, and all his rights, credits, choses in action, and interests of every kind, will not extend beyond the payment of the foregoing debts, he designates no others; but is anxious to secure the foregoing creditors of the first and second classes fully, and the two last mentioned creditors to the extent of the balance of his means.

Now this indenture, made and concluded this 27th day of January, 1838, between said Leonard Wheeler, of the first part, and all said creditors of the second part, witnesseth, that in consideration of the premises, and the further consideration of one dollar in hand, paid to him, said Wheeler, the receipt whereof, before the sealing of these presents, is hereby acknowledgments, he, the said Wheeler, hath bargained and sold, and by these presents doth bargain and sell, transfer, assign, and pledge unto the said parties of the second part, and their administrators, executors and assigns, all debts, dues, balances, credits, bills, bonds, notes of hand, and choses in action, due or belonging to him, said Wheeler; all of which are particularly enumerated on his books, and amount to the sum of $15,495 20, in the aggregate, but should there be any not included in said aggregate, they are also embraced and conveyed; also any and all effects of said Wheeler remaining in the storehouse of Joseph Putnam, on Main street, in Lexington, and not sold and delivered to said Joseph Putnam; also all his room furniture and effects in his room at the corner of Short and Market streets, in Lexington; also all his other rights and interests, of every description and kind whatever; all of which debts, dues, balances, credits, bills, bonds, notes of hand, choses in action, goods and effects, room furniture, rights and interests, are to be held by said parties of the second part, and their administrators, executors and assigns, forever, upon and for the following uses, trusts, purposes, conditions and preferences, to wit: That the same shall with due speed and diligence be collected and converted into money, and when so made available shall be applied first to the full and complete discharge of each and every debt, mentioned or embraced in the first class of debts, as before set forth; and after the payment of the debts of the first class, then next to be applied to the making good any deficiency in the complete and full discharge of the debts of the second class, as before set forth; and after the payment of said debts of the first and second classes, then to the debt due to the assignee of F. & J. Sexton; and after the payment of said debt, then next to the discharge of said Wheeler's securityship to F. L. Turner and John L. Winter.

And upon the following other trust, purpose and condition: That whereas said creditors of the first and second classes, or a majority of them, shall nominate, appoint and constitute an agent, attorney in fact, or trustee, for that end all said debts, dues, ballances, credits, bills, bonds, notes of hand, choses in action, goods and effects, rights and interests, and all the evidences of them, shall be placed in his hands and control, for the purpose of executing and fulfilling the first above mentioned uses, trusts, purposes, conditions and preferences, and to the extent of securing said creditors of the second class, the benefit of the provision made for them as aforesaid, the said Wheeler doth, for the considerations aforesaid, bargain and sell, transfer and assign to them all the benefit of said obligation of said Putnam; and all rights, liens, and interests which said Wheeler may have upon said stock of goods so sold and delivered as aforesaid; and all and every thing or right in or about said goods, which he has power to alien and convey for the security and payment of their debts aforesaid.

The unsettled account between said Wheeler and Ben. Slater & Co., concerneth shoes and gum elastic banding, sold and sent back to said firm; and the unsettled account between said Wheeler and said Norman Porter, concerneth a speculation in wool, bought and sold on their joint account, and on which account there is a note of them, said Porter and Wheeler, for $1,480 09, due to the branch bank in Lexington, and forming an item in said unsettled account.

LEONARD WHEELER. [L. S.]

Attest: Jos. K. Graves,
Nat. Shaw.

Commonwealth of Kentucky, *Fayette County, to wit:*

I, James C. Rodes, clerk of the county court for the county, do certify that the deed of mortgage from Leonard Wheeler to Walter Carr and others, was this day produced to me by the grantor, and acknowledged by the said Leonard Wheeler to be his act and deed, and ordered to be recorded; which is truly recorded in my office.

Given under my hand, this 30th day of January, 1838.

Attest: J. C. RODES, *Clerk.*
By WALTER RODES, *D. C.*

The foregoing deed of mortgage, from Leonard Wheeler to Walter Carr and others, is truly transcribed from the original, now in my office, recorded.

Attest: J. C. RODES, *Clerk.*
By WALTER RODES, *D. C.*

The following are the exhibits referred to in L. Wheeler's answer to annexed bill, to wit:

Exhibit G.

List of ballances due L. Wheeler, January 27, 1838.

Andrew Fittzten, Tennessee, note	$20 00
Settled D. H. Bosworth, Fayette county	100 00
William Jonett, Boone county	17 20
Paid W. C. Carr, Fayette county	50 00
John Reed & Co., Danville	300 00
Paid Will. Deane, Richmond	39 57
Paid A. W. Pinckard, Estill county	27 44
Paid B. F. Rogers, Fayette	30 38
Jno. L. Winter, Lexington	188 23
Paid Sampson & Hackley, Hardinsville	45 00
Paid Jabez Beach, Lexington	9 81
Paid B. F. Rogers, Fayette county	25 00
Paid do. do.	25 00
Paid Benj. Byram, Mercer county	67 50
Paid Robert Figg, Stamford	18 80
Paid Thomas Rankin, Lexington, say	30 00
Smith & Knowles, Stamford	66 75
Paid John K. Powers, Estill	40 00
John Reed & Co., Danville	607 98
Paid Joseph Porter, Paris	246 70
Paid do. do.	36 00
Paid Jno. J. Cannon, Scott county	27 09
Paid Joseph Beach, Lexington	23 00
Paid N. L. Firmel, Winchester	20 00
Paid L. Spoonemoie, Stamford	83 99
Paid W. C. Bell, Lexington	150 00
Paid James Hamilton, Lexington	211 05
Paid do. do. do.	211 65
Paid, 32, H. C. Dimmick, belongs to Jno. Winter's trust	132 00
Paid F. Tod, Lexington	244 34
D. Lauderman do.	10 75
Paid Will. Runyon do.	35 53
Paid T. E. Boswell do.	49 89
Paid Thos. W. Boyd, Richmond	70 25
Paid Miller & Sheaffer, balance note and account, Barboursville	168 68
Paid James Trotter, Nicholasville	52 30
W. Adams & Son, Winchester	78 40
Paid James Ingels, Paris	304 67
Paid Robert Huston, Lexington	8 65
Paid Samuel Campbell, Mount Sterling	49 25
Paid Henry Hann, Scott county	67 83
Paid Phil. Breckenridge, Fayette county	2 50
Stinson & Hulett, Madison county	3 63

Paid Hiram Doolin, Richmond	34 04
Paid Joseph R. Crow, Lancaster	220 84
Paid George Kirkendall, Madison county	93 63
Paid Bush & Adams, Winchester	291 37
Paid Boggess & Richards, Lawrenceburg	7 02
B. C. & U. P. Randall, Harrodsburg	93 82
Paid Will. Figg, Danville	72 75
Paid Odgen & Fitz, Carlisle	66 26
Paid Samuel Oldham, Lexington	8 75
Welcome Ashlock, Stansford	106 75
Paid W. C. Connett, Fayette	25 50
Paid Loyd Benton do.	1 12
N. Bosworth do.	62
Paid Wilcher Breckenridge, Lexington	4 83
Cath. Sanders	69 88
Walter Carr, 3d, Clarke county	1 69
Paid Shaker Fulling Mill, Mercer county	6 05
Richmond Turnpike Stock	100 00
Paid Daniel Bradford Lexington,	44 18
A. J. Robertson, Meade county	9 75
Stuart & Starke, Georgetown	176 25
Paid W. Carr, 1st, Fayette county	4 35
Paid Benj. Fitten do.	2 75
Paid L. A. Schock & Co. St. Louis	45 76
Mrs. M. A. Holley, Lexington	10 74
Hunt & Paddock, St. Louis	200 16
Paid E. R. Osborne, Tennessee	121 62
Paid James Cooney, Mercer county	18 00
Paid Thos. C. Drear, Lexington	42 12
Paid Stedman & Thompson, Georgetown	13 50
Paid Jo. & Ben. Graves, Lexington	3 92
Paid J. R. Bryant, Mercer county	5 48
Furnel & Zimmerman, Lexington	60 82
Paid Will. Deane, Richmond	2 50
Paid Levy & Dolan, Lexington	16 64
Paid Kelly & Wilson, Paris	19 20
Paid Joseph Turner, Richmond	49 00
J. J. Anderson, St. Louis	100 00
Paid A. McCurdy, Lexington	448 52
Paid 200, Will. Lakin & Co., Georgetown	554 12
Paid James White, Versailles	449 84
Paid R. S. Haviland & Co., Harrison county	26 50
Paid L. P. Young, Lexington	18 50
Paid N. & H. Shaw do.	279 53
Paid James Wood do.	27 35
Paid Spears, Talbot & Co., Paris	10 50
Paid Johnson & Dudley, Frankfort	110 30
Paid Jno. C. Noble & Co.	36 05

Goods to E. & C., H. & P., embraced in this amount.

Settled D. H. Bosworth, Fayette county, erroneous amount	1,280 92
Paid Joseph Porter, Paris	50 88
Paid A. McDaniel, Richmond	61 94
Paid E. & S. Steadman, Franklin county,	172 25
Paid Elizabeth Cooke, Lexington	486 69
Paid, 9, Thos. Logwood, Lexington	19 14
Paid Ewing & Cromey, Louisville*	135 00
Paid Carlisle, White & Co., Cincinnati*	90 00
Paid Hunt & Paddock, St. Louis*	265 00

* Not correct amounts.

Sold horse at Boswell's, Fayette	40 00
Furniture in room, &c., say	150 00
Unsettled claims, B. Wood, belong to Whig concern, say	250 00
Paid Ewing & Cromey, Louisville, acceptances	2,255 18
Paid Thos. E. Boswell, Lexington, cash account	346 86
Paid part of note due from J. & S. Hall	376 00
Sold Ewing & Cromey, 3 bales jeans and lindseys	282 20
Returned Hunt & Paddock, jeans, error	226 28
J. J. Anderson, jeans entered twice	151 45
Sold wool speculation, 1,135 1-4 lbs., say a 20 c.	227 05
Paid about 1 50, charges memo. book	370 00
Cash on hand	149 56
	$15,506 72

List balances due Leonard Wheeler, Nov. 6, 1837.

Andrew Fritzten, Tennessee, note	$ 20 00
D. H. Bosworth, Lexington, note	100 00
Will. Jonett, Boone county, note	17 20
Paid Walter Carr, jr., Fayette county, note	50 00
John Reed, Danville, note	300 00
Paid Robert Young, Nicholasville, note	7 14
Paid Will. Deane, Richmond, note	39 57
Paid Sam. Spoonernore, Stanford, note	200 00
Faid James Royle, Lexington, note	67 65
Paid A. W. Pinckard, note	52 44
Paid Sampson & Hackley, Hardinsville, note	45 00
Paid B. F. Rogers, Fayette county, note	80 38
Paid Jabez Beach, Lexington, note	9 81
Paid J. Clarke & Co., note	307 61
Paid Hall & Miller, Scott county, note	350 00
Paid Benj. Byrain, Mercer county, note	67 50
Paid James Hutchens, Paris, note	20 50
Paid Robert Figg, Stamford, note	128 49
Paid Hiram Doolin, Richmond, note	204 50

Paid Smith & Knowles, Stanford, note	66	75
Paid John K. Powers, Irvine, Estill county, note	40	00
Paid James Hamilton, Lexington, note	530	00
Paid Ogden & Fitz, Carlisle, note	88	73
Paid John Reed & Co., Danville, note	607	98
Paid Joseph Porter, Paris, note	680	28
Paid John J. Cannon, Scott county, note	27	09
Paid George Haight & Co., New York, account	3	33
Paid Sam. Ashmead, Philadelphia, account	66	24
Paid Porter & Butler, Lexington, account	542	91
Paid William Ruyon, Fayette, county, account	35	53
Paid S. B. Vanpelt, Lexington, account	4	00
Paid Thomas W. Boyd, Richmond account	70	25
Paid Miller & Sheaffer, Barboursville, account	193	68
Paid D. A. Sayre, Lexington, account	8	87
Paid Newcomer M. & Co. & Smedes, Louisville, act.	7	75
William Adams & Son, Winchester, account	78	42
Paid John Baltzell, Frankfort, account	10	07
Paid Boon Ingles, Paris, account	275	37
Paid Robert Huston, Lexington, account	8	65
Paid Samuel Campbell, Mt. Sterling	49	25
Paid Henry Hann, Scott county	59	91
Paid A. W. Massie, Winchester	100	51
Stinson & Hullett, Madison county, account	23	63
Paid Hiram Doolin, Richmond	34	04
Paid Joseph R. Crow, Lancaster	270	84
Paid George Kirkendall, Madison county	93	63
Paid Bush & Adams, Winchester	241	32
Paid Joseph Boggess, Lawrenceburg	57	02
W. P. Randall, Harrodsburg	92	82
Paid William Figg, Danville	72	75
Paid Ogden & Fritz, Carlisle	66	26
Paid Sam. Holdham & Taylor, Lexington	11	25
Paid George Dunlop	4	00
Paid Chum & Gaines, Lexington	3	19
Paid W. C. Connett, Fayette county	25	50
Bosworth & Benton, Fayette county	5	75
Thomas Logwood, Lexington	9	14
Catharine Saunders, Lexington	49	88
Paid Isaac Reed, Lexington	11	31
Paid James W. Winter, New York	50	04
Richmond Turnpike Stock, Hayette & Madison, say	50	00
Paid Insurance Stock, Lexington, say	150	00
Paid Andrew Caldwell, Lexington	5	06
Paid Daniel Bradford, Lexington	40	18
A. J. Roberson, Meade county	8	75
Paid James Cromey, Louisville	112	00
Stewart & Starke, Georgetown	176	25
Paid Benjamin Fitten, Fayette county	2	75

Paid L. A. Schrock & Co., St. Louis	45 76
Messrs. M. A. Holley, Lexington	10 74
Paid Ewing & Cromey, Louisville	472 05
Hunt & Paddock, St. Louis	256 12
Paid E. R. Osborne, Tennessee	21 62
Paid James Cooney, Mercer county	18 00
Paid J. H. Hardie, Frankfort	32 25
Paid Steadman & Thompson, Georgetown	13 50
Paid Weer & Hutton, Fayette county	24 06
Paid Jo. Matthews, Fayette county	9 75
Fuinell & Zimmerman, Lexington	82 00
Paid William Deane, Richmond	2 50
Paid Bishop & Kirkendall	24 87
Paid Kelly & Wilson, Paris	18 20
Paid Charles Carr, Fayette county	9 06
Paid Turner & Co.	27 75
J. J. Anderson, Tennessee, say	100 00
Paid Lyle & Walker, Paris	45 00
Paid A. McCurdy, Lexington	619 58
Paid W. F. Tod, Lexington, say	300 00
William Lakin & Co., Georgetown	654 12
Paid James White, Versailles	709 54
Paid Alfred Warner, Fayette county	26 50
Paid Levin P. Young, Lexington	84 25
Paid N. & H. Shaw, Lexington	515 93
Paid James Wood, Lexington	46 35
Paid Spears, Talbot & Co., Paris	10 50
Paid Johnson & Dudley, Frankfort	110 30
Paid J. C. Noble & Co., Lexington	36 05
D. H. Bosworth, Fayette, say	1,467 41
Paid James Porter, Paris	33 88
Paid A. McDaniel, Richmond	61 94
Paid E. & S. Steadman, Franklin county, say	100 00
Paid E. Cooke, Lexington	154 19
Paid J. & B. Graves, Lexington	386 90
Paid goods consigned to Ewing & Cromey, Lousville, say	1,000 00
goods consigned to Hunt & Paddock St. Louis, say	350 00
Paid goods consigned to Carlisle, White & Co., Cincinatti, say	100 00
Paid Thomas E. Boswell, cash account, Lexington	245 12
Cash in bank and on hand	2,091 05
	$17,436 26
Stock on hand	7,038 40
	$24,468 66

Exhibit referred to in some of the amended Bills, to wit:

[Copy] NEW YORK, *January* 12, 1838.

Messrs. WOLFE & CLARKE.

GENTLEMEN: The annexed assignment or quit claim of F. Sexton, surviving partner of F. & J. Sexton, I consider good as Mr. Dewitt being the counsel of the Sextons in their difficulties, states they were fully discharged by their creditors by certain compromise, thereby leaving the whole of their assetts at their controul.

The Messrs. Sextons were legally indebted to the firm of Haggerty & Austin, at the time of their failure, &c., and the claim was so settled; there can be no doubt of F. Sexton's release being entirely good.

Respectfully,

Signed JOHN HAGGERTY.

[Copy] NEW YORK, *January* 12, 1838.

Mr. NORMAN PORTER, *Lexington.*

DR. SIR: We paid over to Mr. Haggerty the $3,000 draft, and received from him the above note and release.

Very respectfully,

Signed WOLFE & CLARKE.

[Copy]

I hereby assign and transfer to Norman Porter, without recourse upon me in any event whatever, a claim in favor of F. & J. Sexton against Leonard Wheeler & Co. for $3,170, due the 31st of April, 1814, for value received; said claim was evidence by a note which has been mislaid, and if found to be forwarded to him at Lexington, Kentucky.

Dated NEW YORK, *January* 11, 1838.

Signed FRANCIS SEXTON,
Surviving Partner of the firm of F. & J. Sexton.

[Copy]

CITY AND COUNTY OF NEW YORK, *ss.*

On the 17th day of January, 1838, before me came and appeared Francis Sexton, who has signed the preceeding transfer, to me well known to be of the late firm of F. & J. Sexton, and the surviving partner of that firm, and signed the above transfer in my presence and acknowledged the same as his act for the use and purposes therein mentioned.

PETER DEWITT,
Commissioner of Deeds in and for the City and County of New York.

The following are the Depositions taken in this cause, to wit: on part of the Complainant.

Interrogatories to be propounded to Matthew T. Scott, of lawful age, witness in behalf of the complainant, to wit, taken from a series of interrogatories filed in the above cause with cross interrogatories.

July 13. Was there a check charged at the office of the Bank of the United States, in Lexington on the 17th September, 1833, to E. J. Winter's account, and credited to Stephen Swift's account for $555 17.

Answer. The books of the Bank United States shew that a check for $555 17, was charged to E. J. Winter, and the same sum, with $70 addition, credited on same day to S. Swift.

Interrogatory 14. Was a check charged at same bank aforesaid, in Lexington, on the 14th October, 1833, to E. J. Winter's account, and credited to Stephen Swift, for $468 44, making in the two checks an aggregate of $1,023 61?

Answer. The books shew that the check described in the question was charged to E. J. Winter's account, and the same, with other funds, credited on the same day to S. Swift.

Interrogatory 63. Was you an officer in the late branch of the Bank of the United States, at Lexington, and have you access to the books of the said branch?

Answer. At the dates named in the interrogatories above, viz., on the 17th September and 14th October, 1833, I was cashier of the said bank, and now have access to the books belonging to the late Bank of the United States, Lexington.

Interrogatory 64. Were the following described checks paid at the office of the Bank of the United States in Lexington, on the respective days they purport to have been drawn, viz:

1st,	drawn	January	11, 1834,	in favor of	Pilkington,	for $464 27
2d,	do.	April	11, 1834,	do.	do.	463 47
3d,	do.	July	12, 1834,	do.	Swift,	464 28

Answer. The books of the banks shew that checks corresponding in amount with those described in the question, were paid and charged to E. J. Winter's account on the days named in the question.

Interrogatory 65. To whose account were the several checks, enumerated in the 64th interrogatory, respectively credited in said bank?

Answer. The amount of the check for $464 27, on the 11th January, 1834, credited to S. Swift, the amount of the check of $463 47, credited to S. Swift, on 11th April, 1834, and also the check of $464 28, to same.

Cross interrogatories propounded to Matthew Scott, on behalf of defendants, in the suit named in caption hereof:

Interrogatory 1st. Are you acquainted with Norman Porter, Stephen Swift, Joseph Putnam, and Leonard Wheeler, and the character they have borne in Lexington, their residence for many years past?

Answer. I have long been acquainted with the persons named in the question, and their characters.

Interrogatory 2d. What has been their character for honesty, integrity, and upright dealing?

Answer. Their character in all these particulars, stands very fair.

Interrogatory 3d. Do you know four men whose character in those respects stands fairer or more unblemished?

Answer. I consider their characters as very good, and I have no recollection of ever hearing the character of either of them impeached until since the controversy between the parties in this suit, and then only by Mr. Winter.

Interrogatory 4th. Are you acquainted with E. J. Winter, and his disposition?

Answer. I have long been acquainted with Mr. Winter.

Interrogatory 5th. Is he not one of the most suspicious men you ever knew? Is he not extremely passionate? And does he not suffer his passions to get the better of his sober reason, and urge him to making charges against men on the vaguest and most groundless suspicions?

Answer. I do not consider Mr. Winter more suspicious of others than many persons of my acquaintance are; he is a man of very strong feelings and passions, but I am not prepared to say that he "suffers his passions to get the better of his sober reason," nor do I know of my own knowledge that he permits his angry feelings to make "charges against men on vague or groundless suspicions."

Interrogatory 6th. Has not Wheeler been for years devoted in his attention to the business of E. J. Winter, and was he not, while manager of said store, devoted in his attention to E. J. Winter's family, acting the part of a friend of the utmost constancy?

Answer. Mr. Winter [Wheeler] for many years was closely engaged in business for Mr. Winter, and seemed to take a great interest in promoting the success of the store. As to his attentions to the family of Mr. Winter I know not.

Interrogatory 7th. Considering Wheeler as having acted fairly in Winter's business, how would you regard a purchase by Winter of an old debt on Wheeler for a small sum, for the purpose of making money out of him?

Answer. I do not know what answer to give to the question, because I know not what motives induced Mr. Winter to purchase the debt.

Interrogatory 8th. Notwithstanding Winter's suspicious dispo-

sition, did he not speak of L. Wheeler in the highest terms of praise for about 18 years, during which the most intimate relations existed between them?

Answer. I do not recollect often hearing Mr. Winter express his opinion of Mr. Wheeler, but from the great trust he reposed in Mr. Wheeler, he, Winter, must have had unbounded confidence not only in his integrity but in his ability to manage a mercantile establishment.

From Plaintiff's Interrogatories.

Interrogatory 122d. State all you know on the subject?

I do not know that I am in possession of any facts or evidence other than what is stated in the answers to other questions. Further this deponent saith not.

M. T. SCOTT.

STATE OF KENTUCKY, *Fayette County, sct.*

The foregoing depositions, in answer to interrogatories annexed, propounded to Mathew T. Scott, of lawful age, was this day taken, subscribed, and sworn to in Lexington, by Mathew T. Scott, before the undersigned, a justice of the peace in and for the said county, that I am not of counsel or attorney to either of said parties, nor interested in the event of said cause. That the same was subscribed by him in my presence, after the same was by him reduced to writing in my presence. The said deposition is taken by complainant to be used as evidence in the suit named in the caption. Given under my hand this 30th day of July, 1839.

DANL. BRADFORD, *J. P. F. C.*

The deposition of Churchill Samuel, taken at Frankfort, this 24th day of August, 1839, to be read in evidence in a certain suit in chancery, now pending in the 8th circuit court of the United States of America, in and for the Kentucky district, wherein John Tompkins, surviving partner of John Tompkins & Adam Murray, is complainant, and Leonard Wheeler and others, are defendants. This deponent being of lawful age, and first duly sworn, deposeth and saith.

15th interrogatory. Did Stephen Swift or Leonard Wheeler buy groceries of you in their name or in the name of Elisha J. Winter, in the year 1833, prior to the 1st of June of that year? If so, please state the transaction.

16th interrogatory. To whom were the groceries, named in the 15th interrogatory, forwarded, and at what time?

17th interrogatory. Did Elisha J. Winter himself purchase groceries of you at any time in the year 1833?

In answer to the 15th interrogatory, sayeth. In May, 1833, Leonard Wheeler purchased of the firm of C. & J. Samuel, as per bill

groceries, to amount of $2,012 27, for which he paid in drafts on Stephen Swift, of Lexington. One dated 11th of May, 1833, at five months for $896 13, and one dated 15th same month for $1,116 14 at four months, being the amount of said purchase.

In answer to the 16th interrogatory, states, that the groceries were forwarded to S. Swift or S. Swift & Co., Lexington, as the deponent finds by reference to his books, and were loaded in wagons on the 17th, to the last of the said month so far as can be ascertained from the books.

In answer to the 17th interrogatory, the deponent sayeth, that he did not sell to E. J. Winter, in person, any groceries during the year 1833, or that he has no recollection of having made any sale to him in person.

126th interrogatory. State all you know on the subject.

Answer. I know nothing further in relation to this matter.

Cross interrogatories filed by L. Wheeler & Co.

1st interrogatory. Are you acquainted with Norman Porter, Stephen Swift, Joseph Putnam, and Leonard Wheeler, and the character they have borne in Lexington, their residence for many years past.

(The foregoing cross interrogatory and the following seven are the same commencing on page 106 and ending on page 107.)

In answer to the 1st interrogatory, says, I am acquainted with Norman Porter, Stephen Swift, and Leonard Wheeler, but has no acquaintance with Joseph Putnam, and thought he was acquainted with the character of said Wheeler and Swift in Lexington.

In answer to the 2d interrogatory, says, the three gentlemen with whom I am acquainted as named in the 1st, has always stood fair with me, as punctual men; with Mr. Swift I have had many business transactions, and was always satisfied as to final settlements.

In answer to 3d interrogatory, I do not sufficiently understand the character of these gentlemen to place them foremost among honorable men, but have always considered Swift, Wheeler, and Porter honorable men, and gentlemen of integrity.

In answer to the 4th interrogatory, says, is acquainted with E. J. Winter, and have always esteemed him as a gentleman, have no knowledge of the extent of his prejudices or partialities.

5th interrogatory, in answer says, has but little or no knowledge of his suspicions or prejudices.

6th interrogatory, in answer says, has no knowledge of Mr. Wheelers connexion with Mr. Winter only from hearsay.

7th interrogatory, in answer says, he knows nothing of the relations between these gentlemen.

8th interrogatory, in answer says, never heard Winter speak of Wheeler until after the suit was instituted.

Cross interrogatories to all witnesses answering the 16th, 17th, or 15th questions of Complainants.

1st. Did L. Wheeler negotiate a purchase of you of coffee on 11th May, 1833, for $896 13, and of sugar on 15th May, 1833, for $1,116 14, for which he gave you E. J. Winters draft on S. Swift, one at 4 and the other at 5 months?

2d. Did not said Wheeler inform you at the time that he purchased part for E. J. Winters store and part for S. Swift? Did you not afterwards correct a mistake in the weights of the sugar sold sometime after the sale?

Answer to 1st. He did, as appears by original acceptance of S. Swift for said bill.

Answer to 2d interrogatory, I have no knowledge of this matter.

Answer to 3d interrogatory, I have some recollection of a mistake having been corrected, but can't say what it was.

CHURCHILL SAMUEL.

STATE OF KENTUCKY, *Franklin County, sct.*

The foregoing deposition of Churchill Samuel was this day taken, subscribed, and sworn to by said Samuel, before the undersigned, a justice of the peace for said county, at the time and place and for the purposes mentioned in the caption thereof, and in obedience to the annexed dedimes, the said deponent having been by me duly cautioned and sworn to tell the truth, the several interrogatories were reduced to writing—me in his presence, and the several answers were written out by the witness in my presence, and subscribed by him. I further certify, that I am not of counsel for either of the parties, or interested in the event of this suit.

Given under my hand this 24th day of August, 1839.

H. WINGATE, *J. P.*

The deposition of Charles C. Winter, taken before William S. Johnson, parish judge of the parish of Rapides, county of Rapides, and State of Louisiana, on the 31st day of August, of the year 1839, at his office in the town of Alexandria, in the parish, county, and State as aforesaid, to be read as evidence in a certain suit now pending in the circuit court of the United States, for the 8th circuit and Kentucky district, holden at Frankfort, wherein John Tompkins surviving partner, &c., is complainant in chancery and Leonard Wheeler and others are defendants. The said deponent being first carefully examined, cautioned, and sworn to tell the whole truth touching the controversy, whether interrogated or not, doth depose and say, that he lives at a greater distance from the said town of Frankfort than 100 miles; furthermore, he saith, that he is not in anywise interested in the event of suit Tompkins against Wheeler and others. That he is the son of Elisha J. Winter Lexington, Kentucky; that he went into his fathers store as a clerk in the year 1827, and continued in it until it was closed in December

1835; that during the whole of that time and for a long time previous, even to the deponents earliest recollection, and he is now in his 27th year of age, the aforesaid store was conducted and managed by Leonard Wheeler, who enjoyed to an unlimited extent the confidence of the aforesaid Elisha J. Winter 'til the month of September, 1835, his confidence then being for the first time impaired by the very large amount of liabilities that he had been brought under by the aforesaid Leonard Wheelers management, all payable at a short date, say 6 months from the month of September as above mentioned, and expressed great alarm at his situation. The amount of the liabilities for which the aforesaid Leonard Wheeler had made him responsible was above $20,000, but the whole amount of the liabilities of the mercantile concern aforesaid, was between $25,000 and $30,000.

In the month of January, of the year 1832, the aforesaid Elisha J. Winter surrendered to the aforesaid Leonard Wheeler his business, together with his capitol, which consisted of merchandize, his store-rooms, and warehouse, to prosecute and continue the business for the benefit of the aforesaid Leonard Wheeler and the deponent, the family expense account of the aforesaid Elisha J. Winter to be paid out of the profits of the business.

In the fall of the year 1834, the aforesaid Elisha J. Winter, determined on removing south to live, and gave the aforesaid Leonard Wheeler notice to wind up the aforesaid concern as speedily as possible, without loss. In the spring of the year 1835, on the return of the aforesaid Elisha J. Winter from New Orleans, he continued his request and went on to New York to spend the summer, from whence he returned, the deponent thinks, in the month of September following, and then, for the first time, within the deponent's knowledge, he began to investigate his affairs, and found that the business as managed by the aforesaid Leonard Wheeler, in the name of the aforesaid Elisha J. Winter, was further expanded, and his liabilities to be met in a short time was greater as he expressed it, than at any antecedent period of his life, and he appeared much alarmed. The deponent thinks that the business was more expanded, and the liabilities were greater than the aforesaid Elisha J. Winter had been led to expect from the conversation he had had with the aforesaid Leonard Wheeler, on the subject. Some short time after, perhaps in the latter part of the month of October, or in the fore part of the month of November following, the aforesaid Leonard Wheeler left Lexington for Kenhawa, Virginia, on his own private business, to be gone only ten days or two weeks, but he did not return until late in the month of December following, having extended his journey as far as Boston, Mass. Before his return the aforesaid Elisha J. Winter had left Lexington for New Orleans.

In the month of January, of the year 1832, the aforesaid Leonard Wheeler, and the deponent invoiced the stock of goods on hand in the aforenamed store of the aforesaid Elisha J. Winter, at

cost, when the were worth it, and when they were not worth cost, at such price as the aforesaid Leonard Wheeler was willing to allow for them, no carriage or exchange being added to their prime cost. After the return of the aforesaid Elisha J. Winter from New York, in the year 1835, and after becoming alarmed by the magnitude of his commitments, he ordered the collection of the outstanding debts, pressed, and the goods to be sold at cost, to realize as fast possible, which was done.

The original stock of goods which the aforesaid Leonard Wheeler begun the business with in the month of January, of the year 1832, for his own and the deponent's benefit were invoiced by them at what they cost in New York and Philadelphia, &c., and under.

The aforesaid Elisha J. Winter gave a full year's notice to the aforesaid Leonard Wheeler to close the aforesaid business, and the hurry that ensued in closing was caused by the necessity to meet the aforesaid Elisha J. Winter's engagements, arising in the prosecution of the aforesaid business, and his dissatisfaction at the manner in which it was managed, which resulted, as he supposed it would, in a loss to him. Nothing realized out of the aforesaid business, at least by the deponent, beyond his living. The deponent hath in his possession a memorandum in his own handwriting, taken from the accounts books of the aforesaid concern, from which he finds that the merchandize account is debited from the month of January, of the year 1832 to the close of the business in the year 1835, with - - - - - $139,136 30

And that it is credited by gross sales with - 160,190 43

which shows a profit of - - $21,054 13, or about 15 per cent. all round; out of which twenty-one thousand and fifty-four dollars and 13 cents had to be paid all the expenses of prosecuting the business, and the aforesaid E. J. Winter's family expenses, and the bad debts.

The aforesaid Leonard Wheeler's private expense account, together with the deponent's amounted to about $5000; the aforesaid Leonard Wheeler's something the greatest. The goods that were sold in the aforesaid store brought a profit of from ten to fifty per cent. on first cost. Deponent thinks that they were sold at an average profit of thirty per cent. on first cost, but on closing the aforesaid concern the books only showed an average profit of about 15 per cent. on first cost. The deponent is not prepared to account for the contradiction between the apparent and true result.

The dissatisfaction of the aforesaid Elisha J. Winter was increased on his discovering that the aforesaid Leonard Wheeler had charged the interest which was paid on money which was used in the prosecution of the aforesaid business to the private account of the aforesaid Elisha J. Winter. The aforesaid Elisha J. Winter found other errors in his account, amounting to some thousands of dollars, and left a memorandum of errors with the deponent to be handed to the

aforesaid Leonard Wheeler, who, upon examination of the aforesaid account admitted that there errors to a large amount, which errors the aforesaid Leonard Wheeler thought arose in transcribing some accounts in the books used in the business prior to the year 1832 into the books used in the business subsequent to the year 1832.

In the prosecution of the business of the aforesaid concern it was found necessary to barter for a large amount of country produce, as also for foreign dry goods and groceries; and the accounts created by this trade were, with the exception of 3 or 4 instances, all kept in a book made expressly for the purpose, entirely disconnected from the general books of the aforesaid concern; consequently no produce or goods thus bartered for, ever went into the merchandize account until they were really sold, some of which were sold for less than the price paid for them in barter, some for more, but the great majority for the same price at which they were thus bought. The deponent thinks they averaged upon the whole, the same price at which they were bartered for. The deponent thinks the hatter's trimmings averaged about the same profit as the dry goods that were sold in the aforesaid store, but that the hatter's furs did not yield so much in consequence of the loss in weight and by the moth. Shoemakers' tools paid a larger profit generally than any other one article, but the amount sold was very small compared with the whole amount of sales, perhaps not the twentieth. The deponent thinks that the manufacturing of jeans and linsey did not yield a large profit of itself, but connected with the aforesaid concern it was advantageous, as it aided in procuring sales for other goods; and when sales were effected of the aforesaid jeans and linsey, the amount sold was always passed to the credit of D. H. Bosworth & Co., the name and style under which they were manufactured, and for whose benefit they were disposed of. David H. Bosworth and Elisha J. Winter, aforesaid, formed the company for the manufacturing of the abovementioned jeans and linsey, and were equal partners.

The deponent thinks that the aforesaid Elisha J. Winter did not gain by the business as conducted by the aforesaid Leonard Wheeler, in Lexington, much, if any thing, more than a bare support for his family, which was always very economically conducted.

The deponent thinks that from the month of January, of the year 1832, down to the close of the business in the year 1835, the capital of the aforesaid Elisha J. Winter was diminished, but how much he is not prepared to say, as that depended greatly upon the collection of debts, many of which were of a doubtful character, being due from negro slaves and free negroes.

The deponent thinks that during 18 years business the whole amount of bad debts could not much have exceeded $6,000 or about 1 per cent. on the gross amount of sales of merchandize in that time. This deponent thinks that the sales including the sales of jeans and linsey manufactured as aforesaid, must have averaged over forty-five thousand dollars per annum, from the

month of January, of the year 1832, to the close of the aforesaid business in the month of December of the year 1835.

After the return of the aforesaid Elisha J. Winter from Europe, which was in the month of January, of the year 1837, he became excessively excited on his discovering that an entry made in the books of the aforesaid concern some years previous had been altered during his absence as he supposed—from that time the aforesaid Elisha J. Winter appeared more dissatisfied with the aforesaid Leonard Wheeler, than the deponent had ever before observed. The entry abovementioned was one made by the aforesaid Leonard Wheeler in his own handwriting, and was made to settle in full the private account of the aforesaid Leonard Wheeler, as the books used in the business prior to the year 1832, will show, and the alteration of the aforesaid entry cancelled that settlement, which alteration was also made by the aforesaid Leonard Wheeler. The aforesaid Elisha J. Winter detected the aforesaid alteration, and in this manner the aforesaid Leonard Wheeler presented an account against the aforesaid Elisha J. Winter for services rendered amounting to between $6,000 and $8,000, which account embraced a period of time anterior to a previous settlement upon a reference to the books used in the business at that time, that anterior settlement which was unconditional, was made otherwise. The aforesaid Elisha J. Winter about the latter part of *the month of the year* 1837, asked the deponent to walk with him to the store of the aforesaid Leonard Wheeler, which he did, and attended to following conversation :

The aforesaid Elisha J. Winter observed to the aforesaid Leonard Wheeler that he had come to settle for the judgment obtained recently in the federal court against the aforesaid Leonard Wheeler, and that they could do so in five minutes, if the aforesaid Leonard Wheeler was then disposed. The aforesaid Leonard Wheeler was then asked by the aforesaid Elisha J. Winter how much he the aforesaid Leonard Wheeler was worth in the month of January, of the year 1836, when he began business for himself, the aforesaid Leonard Wheeler replied, not a dollar in the world, that when he went to Boston in the fall of the year 1835, he had not money enough to pay his expenses, and that he had to borrow some to enable him to get back ; the aforesaid Elisha J. Winter replied very well, our business can be easily settled. The aforesaid Elisha J. Winter then asked the aforesaid Leonard Wheeler what he had made since he began business, the aforesaid Leonard Wheeler replied, that when he paid the aforesaid Elisha J. Winter one thousand dollars in the month of March, of the same year, that it was more than he was worth in the world; the aforesaid Elisha J. Winter then remarked, that renders it still more easier to settle. The aforesaid Elisha J. Winter then observed to the aforesaid Leonard Wheeler that he may have made from that time to the present time five hundred dollars ; to which the aforesaid Leonard Wheeler replied, that is doubtful ; that he was then engaged in a

wool speculation in company with Mr. Norman Porter, and that it did not promise to turn out well; that if he lost on the speculation he had made nothing. The aforesaid Elisha J. Winter then observed to the aforesaid Leonard Wheeler that he wished to bring their business to a close, and that he made the following proposition, viz: the aforesaid Elisha J. Winter to take an assignment of all the aforesaid Leonard Wheeler's property, out of which assignment the aforesaid Elisha J. Winter agreed to pay all the debts the aforesaid Leonard Wheeler had contracted in the business in which he was then engaged, and after that the first five hundred dollars that was left should be paid to the aforesaid Leonard Wheeler; the residue, whatever it might be, he would receive in full discharge of the judgment recently obtained against the aforesaid Leonard Wheeler in the federal court. The aforesaid Leonard Wheeler replied that he would do no such thing; remarking further, do you think I am going to rob my other creditors to pay this debt? The aforesaid Elisha J. Winter then observed to the aforesaid Leonard Wheeler, you will not accept my proposition; to which the aforesaid Leonard Wheeler replied, no, sir. The aforesaid Elisha J. Winter then observed to the aforesaid Leonard Wheeler, that he thought eleven or twelve thousand dollars was a very pretty compensation for some eighteen months business, began without a capital; that it was more than the aforesaid Leonard Wheeler had made for him in a much larger business of the same kind, in as many years, with a capital. The aforesaid Leonard Wheeler then remarked to the aforesaid Elisha J. Winter, that he supposed he wanted to try him; to which the aforesaid Elisha J. Winter replied, that whether he did or not, he was willing to do what he had proposed. The aforesaid Elisha J. Winter then observed to the aforesaid Leonard Wheeler, that he had accused all of his children, one after another, that were employed as clerks in the aforesaid store, as well as other persons so employed, with having taken more money than their accounts would show; that he, the aforesaid Leonard Wheeler, had driven his, the aforesaid Elisha J. Winter's, children from him, one after another, and scattered them over the face of the earth, by his representations, which he had relied on; but which representations, he, the aforesaid Elisha J. Winter, now believed to be false; and that he was determined to investigate the affairs of the aforesaid Leonard Wheeler, in despite of him, and ascertain the truth; that the last accusation he had made he appeared to be ashamed, after having seen a statement of that child's expenses; and then the aforesaid Elisha J. Winter called upon the aforesaid Leonard Wheeler to give as satisfactory a statement how his, the aforesaid Leonard Wheeler's personal expenses were so small, being for many years less than four hundred dollars per annum. The aforesaid Elisha J. Winter then observed to the aforesaid Leonard Wheeler, that no one acquainted with his manner of living would believe that to be whole amount of his expenditures. The aforesaid Leonard Wheeler replied, that he knew he had been accused of spending large sums of money among the

women, but that in five years he had not spent as many dollars in that way.

The deponent thinks, from the knowledge he has of the business in which the aforesaid Leonard Wheeler was engaged at that time, that he was not far wrong when he said he had not made $1,000 by his business, from the time he began, down to the month of March, of the year 1837. The deponent thinks that the aforesaid Elisha J. Winter, in the fall or the year 1835, revoked the authority of the aforesaid Leonard Wheeler had to draw and endorse paper in his name; but the books of the bank will probably show whether he did or not. The deponent left Lexington in the latter part of the month of November, of the year 1837, and has lived as clerk in Natchez, Miss., and Alexandria, La., the greater part of the time since his departure from the aforesaid town of Lexington.

The deponent saith, that he has endeavored to state every thing that he supposed would be required of him, that he could do without having the books and papers before him, that he has not omitted any thing with a desire of doing injustice to either party, and should any thing he has said be controverted, that can be explained by the books or papers of his father, he hopes the court will be graciously pleased to order them before it, or have them examined by some persons competent, that injustice may be done to neither, and that his reputation may not suffer, his situation is a delicate one, that of giving testimony at a distance, in the absence of what is necessary to refresh his memory, but he confidently believes that he has mistated nothing, and further the deponent saith not.

CHARLES C. WINTER.

The word "determined" between the 15th and 16th lines on the second page, the word "increased" between the 28th and 29th lines on the fourth page, the word "which" between the 37th and 38th lines of the 9th page interlined and approved.

CHARLES C. WINTER.

THE STATE OF LOUISIANA, *Parish of Rapides.*

I, William Stoddard Johnson, parish judge of the Parish Rapides, State of Louisiana, and ex officio a notary public duly empowered and sworn and acting as such, do certify that at the request of the said complainant, I caused the above named Charles C. Winter deponent in the foregoing deposition, to come before me at the time and place in the caption, because the said witness resides at a greater distance than 100 miles from Frankfort at the place of holding the said court of the United States as is stated. I did not cause any notice to be given to the adverse party of the time of taking this deposition, because said adverse party does not as I know or believe, reside within 100 miles of the place of taking the same, nor has said party any agent or attorney, known to me with-

in that distance. That the said witness was by me carefully examined, cautioned and sworn then and there to testify the whole truth, that said deposition was wholly reduced to writing by said deponent in my presence, and that he then and there in my presence, subscribed the same. That I am not counsel or attorney for either of the parties, or interested in the event of the cause; all which is certified to said court as the cause wherefore this deposition, and for the manner in which it was done.

In testimony whereof, I have hereunto assigned my name as parish judge, in and for the Parish of Rapides, State of [L. s.] Louisiana, and ex officio notary public, this 31st day of August, A. D. 1839, and have affixed hereto my seal.

WILLIAM S. JOHNSON, *Parish Judge.*

The deposition of Thomas I. Isles of lawful age, taken at Lexington this 27th day of August, 1839, to be read in evidence in a certain suit in chancery, now pending in the 8th circuit court of the United States of America, in and for the Kentucky district, wherein John Tompkins surviving partner of John Tompkins & Adam Murray is complainant, and Leonard Wheeler and others are defendants. The deponent being of lawful age, deposeth and says.

Interrogatory 66. Have you examined the cash book, and the bank account kept in the store in Lexington Kentucky, conducted by Leonard Wheeler in the name of Elisha J. Winter, for some years prior to the year 1836.

Interrogatory 67. Do both books bear evidence in the handwriting of Leonard Wheeler, that the following described checks were drawn by said Wheeler, viz:

January 11, 1834 - - - - -	$464 27
April 11, 1834 - - - - -	463 47
July 12, 1834 - - - - -	464 28

Interrogatory 68. Do the books of E. J. Winter referred to, evidence that the checks enumerated and described in the 64 and and 67 interrogatories, were drawn by Leonard Wheeler, and paid to Stephen Swift for purchases made at the auction sale of the grocery store of S. Pilkington deceased, on the 9th July 1833?

Interrogatory 69. From the examination you have made in the books of the establishment conducted by Leonard Wheeler, in the name of Elisha J. Winter, what is the aggregate amount of the transactions in the year 1833, between Stephen Swift, and the said store, including the joint purchase at Pilkingtons extrs. sale of the 9th July, 1833, and the purchase of groceries made by S. Swift in May 1833?

Interrogatory 18. In the account before you, purporting to be an account between the office of the Bank of the United States and E. J. Winter, kept in two books beginning the 14th October, 1833, and ending the 23d September, 1835, do you perceive a single en-

try in the handwriting of E. J. Winter; do you profess to be acquainted with the handwriting of E. J. Winter.

Interrogatory 22. Does the bank account aforesaid, bear any evidence, that he, the said E. J. Winter, did between the 14th October, 1833, and the 23d September, 1835, the whole period embraced by them, ever drew a check on the office of discount and deposit of the Bank of the United States in Lexington, for money standing to his credit?

Interrogatory 126. State all you know on the subject?

66 interrogatory. In answer thereto, the deponent says: I have.

67th interrogatory. In answer thereto, the deponent says: They do.

68 interrogatory. In answer thereto, the deponent says: The books bear evidence that the checks enumerated and described in the 67th interrogatory, were drawn by L. Wheeler, and paid to Stephen Swift for purchases made at the auction sale of the grocery store of S. Pilkington deceased, on the 9th July, 1833. The 64th interrogatory has not been put to me.

69 interrogatory. In answer thereto, the deponent says: The purchase made at Pilkington's sale, amounted in the aggregate to $5,206 77, for which the joint notes of Stephen Swift & E. J. Winter, were executed by L. Wheeler in the name of E. J. Winter & S. Swift, and the checks enumerated in the 67 interrogatory, were in part payment of the said notes.

18 nterrogatory. In answer thereto, the deponent says: I do not see a single entry in the handwriting of E. J. Winter, in the books referred to in the 18th interrogatory, I am acquainted with E. J. Winter's handwriting.

22 interrogatory. In answer thereto, the deponent says they do not.

26 interrogatory. The deponent says, in answering the 69th interrogatory, he omitted to say that in the month of May 1833, that L. Wheeler purchased of Stephen Swift, as it appears by an account before me, groceries to the amount of $1,023 61, which was paid for to said Swift as follows, on the 17th September, 1833, $555 17, and on the 14th October after $468 44, making in the two payments $1,023 61. Further the deponent sayeth not.

Cross interrogatories to all witnesses examined by complainant, (Note. Being the same 8 commencing on page 106 of this record,)

1st cross interrogatory. In answer thereto, the deponent says: I am.

2d cross interrogatory. Their character as far I know has been as good as the generality of men.

3d cross interrogatory. In answer thereto, the deponent says: I do not know that I do.

4th cross interrogatory. In answer thereto, the deponent says: That he lived in the store of E. J. Winter, some two years or more, during which time, he was scarcely ever in the store, therefore had but little opportunity of judging of his disposition.

5th cross interrogatory. In answer thereto the deponent says, I cannot answer the questions in this interrogatory affirmatively, for I never knew any occurrence that would justify me in such suspicions.

6th cross interrogatory. In answer thereto the deponent says, that he always thought he was.

7th cross interrogatory. In answer thereto the deponent says, that he does not know what inducement Mr. Winter had for so acting.

8th cross interrogatory. In answer thereto the deponent says, that my knowledge of the parties does not embrace that length of time, but I always thought that Mr. Winter reposed the most unlimited confidence in L. Wheeler, during the time that I lived in the store.

THOS. J. ISLES.

STATE OF KENTUCKY, *Fayette County*, *sct.*

The foregoing deposition in answer to interrogatories annexed, propounded to Thos. J. Isles, of lawful age, was this day taken, subscribed, and sworn to in Lexington, by Thos. J. Isles before the undersigned, a justice of the peace in and for the said county; that I am not of counsel or attorney to either of said parties nor interested in the event of said cause; that the same was subscribed by him in my presence after the same was by him reduced to writing in my presence. The said deposition is taken by complainant to be read in evidence in the suit named in the caption. Given under my hand this 27th day of August, 1839.

DAN. BRADFORD, *J. P. F. C.*

The deposition of William Fellows, taken before Samuel Dickinson, a justice of the peace and one of the judges of the county court of Jefferson county, in the Commonwealth of Kentucky, on the 11th day of June, in the year 1839, commencing at five o'clock P. M. of said day, at the counting-house of said William Fellows, in the city of Louisville, in the county of Jefferson and commonwealth aforesaid, to be read as evidence in a certain suit depending in the eighth circuit court of the United States in and for the Kentucky district, holden in Frankfort, wherein John Tompkins, surviving partner, &c., is complainant, and Leonard Wheeler, Joseph Putnam, &c., are defendants in chancery. The said deponent being first carefully examined, and cautioned, and sworn to tell the whole truth, doth depose and say to the interrogatories of Leonard Wheeler *ads.* John Tompkins, say in answer to the first interrogatory, that I was the agent.

Answer to second. I sold the judgment of Tompkins, to E. J. Winter.

At the request of deponent the further taking of his deposition is postponed until to-morrow morning ten o'clock, to which time it stands adjourned.

Met according to adjournment at ten o'clock, on the 12th day of June, 1839.

Answer to third interrogatory. In the latter part of the year 1836, or early in 1837, the claim of Tompkins against Wheeler was sent to me during my absence from home, probably in February or March, 1837. My brother requested Col. Johnson, (then going to Lexington,) to see Mr. Wheeler and know what he could do towards settlement of the claim. Col. Johnson's report was unfavorable. In course of the summer of 1837, Mr. Winter called to know if I had control of the claim and offered me $1,000 which I refused to accept. He informed me at the same time that the same amount which had previously been offered me, was authorized by him. In the fall 1837, Mr. Winter renewed his offer of $1,000, and expressed his opinion of Mr. Wheeler's condition, which, with the opinion of some others, who I supposed knew Mr. Wheeler's circumstances, induced me to believe that I should not do better. I sold the claim to Mr. Winter in the fall, I think October, 1837.

Answer to fourth. I did.

" to fifth. I believed the purchase for Wheeler's benefit, from the connexion which had existed between them, and the fact that Mr. Wheeler did not write or call to see me until after the sale to Mr. Winter, although he had been informed by Col. Johnson that I held the claim and was not disposed to harrass him; but Mr. Winter did not tell me he was buying it for Wheeler's benefit.

Answer to sixth. I sold the claim to Winter, believing the purchase for Wheeler's benefit. If Wheeler had offered the same amount I would have given him the preference, believing him embarrassed.

Answer to seventh. I suppose for Mr. Winter's benefit.

Answer to eighth. Mr. Wheeler made me no offer previous to the sale.

WM. FELLOWS.

Answers to interrogatories of John Tompkins, &c., against Leonard Wheeler, &c., in second series as headed above.

Answer to first interrogatory. I do not think I enquired of Mr. Winter what he intended to do with the judgment against Wheeler and I have no recollection of his refusal to say what his intentions were in regard to the claim.

Answer to second. I do not recollect any injunction of secrecy at or before the sale of the judgment, but received a written request a few days after asking me not to let it be known that he had control of the claim.

Answer to third. I accepted Mr. Winters offer because I had no other, and did not think I would do better.

Answer to fourth. Mr. Wheeler came to see me very soon after I had disposed of the judgment and made the impression on my mind that his condition was doubtful.

Answer to fifth. I did.
Answer to sixth. Certainly not.

WM. FELLOWS.

Answer to cross interrogatory. I will add that I had no offer from Wheeler whilst I had control of Thompkin's judgment. Wheeler's offer when he called on me after the sale had been made to Winter was in amount about the same as I obtained from Winter, but terms not so satisfactory, as he proposed to pay part of the amount in merchandize, Kentucky jeans, if I recollect right. The sale to Mr. Winter was for his note at twelve months from 3d October, 1837, $1,000 for the amount of Tompkin's judgment and interest, without recourse to Tompkins. I think Wheeler said the offer then made by him was the best he could do, and my impression from his statement of his own condition was that nothing would be gained at law. I certainly would not have sold to Winter or Wheeler if I had supposed I could do better, and should have expected to do better, if I had known Wheeler was a competitor. I waited from early in 1837, until the fall, say October, when I made the sale without getting any offer except Mr. Winter or his agent, and dispaired of getting more when I made the sale. I have stated above terms of sale to Mr. Winter, and as nearly as I can recollect the offer made by Wheeler.

WM. FELLOWS.

I, Samuel Dickinson, one of the justices of the peace of the Commonwealth of Kentucky, in and for the county of Jefferson, duly commissioned, sworn, and acting as such and by law and by virtue of my said commission, one of the judges of the county court of said county, and acting as such, do certify that at the request of the said complainant, I caused the above named Wm. Fellows, deponent in the foregoing deposition, to come before me at the time and place in the caption stated; that the said witness was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me in the presence of said witness, and that he then and there in my presence subscribed the same; that I am not counsel or attorney for either of the parties, or interested in the event of the cause. All which is certified to said court as the cause wherefore this deposition is taken, and for the manner it is done. Given under my hand this 12th day of June, 1839.

SAMUEL DICKINSON, *J. P. J. C.*

The following are the interrogatories answered in the foregoing deposition, to wit:

1st. Were you or not the agent of John Tompkins, in regard to his claim, by two judgments, against Leonard Wheeler & Co.?

2d. What disposition did you make of that claim?

3d. Set out and describe, particularly, all your actings and doing whilst an agent of that claim, and your views and objects in the sale of it to E. J. Winter.

4th. In your sale to E. J. Winter, did you or not, from the relation in which E. J. Winter & Wheeler had stood for years, and from the conversations and statements of Winter to you, believe the purchase was made Winter for Wheeler's benefit?

5th. Give, as near as you can, the conversations and statements of Winter, and the facts and circumstances from which you believed the purchase had been made for Wheeler's benefit.

6th. Was it not your belief of the purchase being for Wheeler's benefit that induced you to sell it to Winter; and would you have sold it to him without your having been made so to believe?

7th. By whom, and for whose benefit, is the present suit on this claim prosecuted?

8th. Had not Wheeler offered you, previously, the same amount agreed to be paid by Winter for this claim, and what amount?

Interrogatories filed in behalf of John Tompkins, &c., in the above suit.

Interrogatories to William Fellows.

1st. Did Elisha J. Winter, when negotiating with you as agent for the plaintiff in the above suit, state you expressly that he would not inform you what object he had in view in obtaining control of the judgments obtained by said Tompkins, in Virginia, against Wheeler & Co.?

2d. Did not Winter, aforesaid, require, before he closed the negotiation with you, that it should not be known that he held the claim; and did he not assign for reason of secrecy, that it might, if known, defeat his object?

3d. Did you not consider the offer made by Winter more for the interest of your principal Tompkins, than that made by Wheeler; and was not that the reason why you gave it the preference?

4th. Did not Wheeler represent to you that his situation was that of entire indigence; or what did he say on that subject?

5th. Did you not accept of Winter's offer because you believed it was the best you could do for Tompkins?

6th. Did your relation to Wheeler hold out any inducement to compromise the interest of the complainant Tompkins?

Cross interrogatories to be put to William Fellows when examined in the above suit.

In answering the 4th of a series of interrogatories lodged on or about the 27th April, 1839, said Fellows will answer and say whe-

ther said Winter did not expressly inform him, pending the negotiation referred to, that he would not tell him the object he had in view in obtaining the control of the judgments against Wheeler, in favor of Tompkins.

In answering the 6th interrogatory, he will say whether he considered the offer made by Winter more or less advantageous for the claimant Tompkins, than that made by Wheeler.

In answer to the same interrogatory, he will say whether Wheeler did not represent himself to be in such indigent circumstances that he was unable to do any better for his creditor Tompkins' claim, than the offer he made. He will also say whether he would have accepted either Winter's or Wheeler's offer, had he believed he could have obtained more for it; and whether he did not accept of Winter's offer because he considered it more advantageous than any compromise he expected from Wheeler, after Wheeler's representation to him of his circumstances.

In answering the 8th interrogatory, he will state the particulars of Wheeler's offer, and that of Winter, that the difference may be ascertained, and in what the different payment were to be made.

The deposition of William C. Bell, taken on Saturday, the 9th November, 1839, to be read as evidence in a suit in chancery, in the eighth circuit court of the United States for the Kentucky district, wherein John Tompkins, survivor aforesaid, is complainant, and L. Wheeler, S. Swift, and others, are defendants.

The deponent being first duly sworn, deposeth, in answer interrogatories.

1st interrogatory by defendants. Did you or not ever keep the books of S. Swift; if so, did you or not make the entries in his books concerning some purchases at Pilkington's sale, and some purchases of Churchill Samuel, of Frankfort? and state the character of those entries so made, if any.

Answer. I was keeping the books of Stephen Swift in October, 1833, and previously, and made the original entries on the 3d of same month, in relation to purchases made by S. Swift and Leonard Wheeler, agent for E. J. Winter, at Pilkington's sale, and of the Samuels. The amount charged E. J. Winter is $1,392 82, of the Pilkington purchase, and $1,023 61, of the Samuel purchase. These entries were made in Swift's day book.

2d interrogatory by same. Were you or not concerned in dividing the purchase made as aforesaid between Swift and Winter's store? if so, state whether you knew the fact that Winter's share of those purchases went to Winter's store.

Answer. To the best of my recollection, I attended to the division of the groceries purchased of Samuels, and assisted in settling the accompt of the joint purchase at Pilkington, and show that the articles purchased as above went to E. J. Winter's store.

2d interrogatory by same. Does Stephen Swift understand book-keeping, or attend to his books himself?

Answer. He knows nothing of the correct method of keeping books; he has always employed clerks to keep his books; I do not belive that he ever attempted to keep his own books.

W. C. BELL.

FAYETTE COUNTY, *sct.*

The foregoing deposition of William C. Bell was taken, subscribed, and sworn to at my office, at the time and for the purpose mentioned in the caption, before me, a justice of the peace in and for the county aforesaid.

Given under my hand this 9th November, 1839.

DAN. BRADFORD, *J. P.*

UNITED STATES OF AMERICA,
Eighth Circuit Kentucky District, sct.

I, John H. Hanna, clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, do certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings had in the case therein mentioned, from the original on record in the clerks office of the court aforesaid.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, this 15th day of December, A. D. 1839, and in the 64th year of our Independence.

JOHN H. HANNA.

To Leonard Wheeler, Joseph Putnam, Norman Porter, Abel Wheeler, Stephen Swift, James Devers, Catharine Huggins, executor of Pilkington, dec'd, Higgins, Cockran, & Co., Ewing & Cromy, Porter & Butler, E. & S. Steadman, F. L. Turner, Charles Carr, & W. Carr, executors of Walter Carr, dec'd, and Thomas H. Pindell, president Kentucky Association:

Whereas an appeal has been prayed by John Tompkins, surviving partner of John Tompkins and Adam Murray, merchants, trading under the firm of Tompkins & Murray, and is hereby granted to the Supreme Court of the United States of America, from a decree of the eighth circuit court of the United States of America in and for the Kentucky district, at the May term of said court, in the year 1840, in a certain suit in chancery, wherein the said John Tompkins, surviving partner, &c., was complainant, and the said Leonard Wheeler and others, were defendants.

These therefore are to cite and command you to be and appear in the said Supreme Court of the United States, at the city of Wash-

ington, on the second Monday in January next, then and there to be heard, if any thing you have to say upon the said appeal.

Witness my hand as judge of the district of Kentucky, this 17th day of October, A. D. 1838.

THOS. B. MONROE,
J. U. S. Ky. Dist.

Executed on L. Wheeler, Swift, Devers, Cath. Huggins, Higgins, Cochran, Butler and Pindell, on 29th October, 1840; on Ewing & Cromey, October 31st; on the Stedman's, Nov. 7th; on Chas. Carr, Nov. 26th; Putnam & Turner not found; N. Porter, Abel Wheeler, and W. C. Carr, not found; are no inhabitants of this district.

JNO. M. McCALLA, *M. K. D.*